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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982
No.

John F. Stevenson, Charles F. Sloan, and
John E. Cooper, Petitioners

v.

General Electric Company
International Association of Machinists
Lodge 912
International Association of Machinist
Local 647 of the United Auto Aero Space
And Agricultural Implement Workers
of America
and
United Auto Aero Space and Agricultural
Implement Workers of America

PETITION FOR WRIT OF CERTIORARI
TO UNITED STATES SUPREME COURT

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1982

No. _____

JOHN F. STEVENSON, CHARLES F. SLOAN, and
JOHN E. COOPER, Petitioners

-vs-

GENERAL ELECTRIC COMPANY
INTERNATIONAL ASSOCIATION OF MACHINISTS
LODGE 912
INTERNATIONAL ASSOCIATION OF MACHINISTS
LOCAL 647 OF THE UNITED AUTO AERO SPACE
AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA
and
UNITED AUTO AERO SPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO SUPREME COURT OF THE UNITED STATES

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

John Stevenson, Charles F. Sloan and John E. Cooper, the Petitioners herein, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on August 16, 1982.

QUESTIONS PRESENTED FOR REVIEW

1.) Whether evidence of discrimination by company and union officials against black employees may be introduced in a class action suit under 42 U.S.C.A. 1981 and 42 U.S.C.A. 2000(e), et seq. to prove that the Defendant Company and Unions intentionally maintained a policy of not permitting black employees to join one of the unions when the evidence is beyond the statute of limitations for introduction of discriminatory acts under both 42 U.S.C.A. 1981 and 42 U.S.C.A. 2000(e).

2.) Whether Petitioners were denied a fair trial when they were: (a) denied the right to discover, prior to trial and during trial, the facts and figures of the affirmative action plan of the respondent General Electric,; (b) when the respondent General Electric was permitted to amend its exhibit and witness list thirteen (13) days before submission of its direct evidence; and (c) when the Court refused to allow Plaintiff to introduce Exhibit 341 to evidence that the articulation made by the Defendant U.A.W. Local 647 and the U.A.W. was pretextual.

3.) Whether in a class action based on race discrimination alleging an intentional maintenance of a seniority system which is not "bona fide" the Petitioner has the burden to prove that the seniority system is not bona fide after statistical evidence establishes a prima facia case.

4.) Whether the charge of retaliation encompasses actions which are only discriminatory or whether they encompass actions by employers which have a detrimental effect to the employee even though they may not be of a discriminatory nature.

5.) Whether an Appellate Court should attempt to resolve factual issues on its own when under Rule 52 of the Federal Rules of Civil Procedure the District Judge makes no findings of fact as to individual discriminatory claims of the Petitioners.

LIST OF PARTIES

Petitioners:

John R. Stevenson
Charles F. Sloan
John E. Cooper

Respondents:

General Electric Company
International Association of Machinists
Lodge 912
International Association of Machinists
Local 647 of the United Auto Aero Space
and Agricultural Implement Workers of America
United Auto Aero Space and Agricultural
Implement Workers of America

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JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit (App. 1-20) was entered on August 16, 1982. Jurisdiction of the Supreme Court is invoked under U.S. Sup. Ct. Rules 19, 20 and 21, and pursuant to 28 U.S.C.A. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. §2000e-3(a)

42 U.S.C. §2000e-2(a)(1)(2)

42 U.S.C. §2000e-2c(1)(2)(3)

42 U.S.C. §2000e-2h

42 U.S.C. §2000e-2j

Amendment V to the Constitution of the United States of America

Fed. Rules Civ. Proc., Rule 34, 28 U.S.C.A.

Fed. Rules Civ. Proc., Rule 52, 28 U.S.C.A.

All Statutes, Ordinances and Rules to be designated fully in the Appendix attached hereto.

CONSTITUTIONAL PROVISIONS and STATUTES

Civil Rights Act 1964, 42 U.S.C.A. §2000e, et seq. 1, 18

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TABLE OF AUTHORITIES

1. Albemarle Paper Company v. Moody, 422 U.S. 405(1975) 12

2. Bryant v. California Brewers Association, 585 F.2d, 421 (CA9, 1978) 21

3. Burns v. Thiokol Chemical Corporation, 483 F.2d, 300 (CA5, 1973) 18

4. Connecticut v. Teal, 73 L.Ed. 2d 130 (1982) 11

5. Donofre v. Transportation Ins. Rating Bureau, 432 F.2d 43 (CA7, 1976) 20

6. Dothard v. Rawlinson, 433 U.S. 32(1977). . . . 12

7. Herbert v. Monsanto Company, 682 F.2d,1111 (CA 5, 1982) 14

8. Hyland v. Kenner Products Co., 13 F.E.P. Cases 1309 (S.D. Ohio, 1976) 20

9. James v. Stockham Valves & Figging Company, 559 F.2d 310 (CA5, 1977) 14

10. Kelly v. Everglades Drainage Dist., 319 U.S. 415 (1943). 20

11. McDonnel Douglas Corporation v. Green, 411 U.S. 792 (1973) 17

12. Petteway v.American Cast Iron Co., 411 F.2d 998 (CA 5, 1969) 20

13. Pullman Standard v. Swint, 102 Sup. Ct., 1781 (1982). 3, 15

14. Rick v. Martin Marietta Corp., 522 F.2d 333 (CA 10, 1975) 18

15. Russo v. Central School Dist. No. I, Towns of Rush, et al., Monroe County, State of New York, 469 F.2d 623 (CA 2, 1972) . . . 20

16. Teamsters v. United States, 431 U.S. 324 (1977) 15

17. Wattleton v. Boilermakers, 686 F.2d 586 (C.A. 7, 1982) 14

STATEMENT OF THE CASE

This is a class action brought by the Petitioners against all of the Defendants alleging race discrimination in the hiring and promoting of black employees; in the processing of grievances for black employees; in the conspiring of the unions and the company against black employees by intentionally discriminating against black employees in the maintaining of separate unions; and the actions of the major unions and the company to limit the ability of black employees to redress their rights under Civil Rights Acts of 1964 (42 U.S.C.A. 2000e, et seq.) and 1888 (42 U.S.A.A.1981). In 1948 when General Electric started the Evendale Plant near Cincinnati, Ohio, two unions were formed at the plant, namely, the International Association of Machinists, Local 912 and United Auto Workers, Local 647. At all times during this litigation, the U.A.W. Local 647 Union, which is the production workers, was between 18 and 26 percent black, while the I.A.M. Local 912, the machinists workers, was between 1 and 3 percent black. All union contracts between General Electric and the two unions had a provision which excluded civil rights

grievances from being arbitrated at the request of either party. Civil rights grievances prior to 1976 could only be arbitrated by mutual consent of the parties. No civil rights discrimination grievances based on race have ever been arbitrated by either the U.A.W. Local 647 or the I.A.M. Local 912 at the Evendale Plant at the time of the filing of the Complaint in 1977.

Testimony evidenced that IAM & UAW Union officials failed to file civil rights grievances for blacks and did not negotiate at any time the right to have civil rights grievances arbitrated at the Union's request. The International UAW was appealed to for help by Petitioner, John Stevenson, to no avail. The UAW Local 647, the only Union which had a sufficient number of blacks did not even allow the issue of race discrimination to be discussed at Union meetings. (App. 35)

The upgrading system at General Electric requires no posting of jobs. Any employee may apply for a promotion at any time. Both union officials and foremen told their friends when the new jobs were available. This practice, along with the failure of General Electric to

employ blacks in positions where blacks could gain experience prior to 1969, caused blacks to receive promotions to new job openings one and a half years after Caucasians. Prelimitation evidence such as the Family Tree Doctrine (individuals could only be promoted to jobs in their own family tree), and upgrading systems which required no applications, were not permitted by the Court.

The District Court, after having found a prima facie case against Local Union 647, the UAW International, and General Electric (the IAM Local 912 was dismissed except for award purposes at the end of Plaintiffs' case), found that both Defendants had articulated a defense which was not proven pretextual. The Court of Appeals of the Sixth Circuit affirmed. The Sixth Circuit committed a clear breach of its duty in lifht of Swint v. Pullman, 102 Sup. Ct. 1781 (1982). The Sixth Circuit found that the District Court consistently held that it would admit prelimitations evidence for the purpose of proving that the Defendants' seniority system was not bona fide. (App. 9, 10)

Portions of the transcript attached to the Appendix clearly evidence that the appellants were not permitted

to introduce any evidence beyond the genesis of the seniority system to prove the seniority system was not bonafide. (App. 63-69) The Court of Appeals further states (App. 17):

> "there was also no evidence that the seniority system was maintained or negotiated for with discriminatory intent."

No evidence that the seniority system (the loss of seniority from one union to the other) was maintained with discriminatory intent was permitted by the District Court.

EVIDENCE

The pattern of segregated unions has persisted since the organization of the unions in 1948. Much of the evidence excluded by the District Judge but proferred or not proferred because of the rulings of the Judge would have shown evidence that blacks were not accepted in the I.A.M. Local 912 union due to their race. (App. 76) Evidence that five blacks had transferred from the U.A.W. Local 647 to the I.A.M. Local 912 between 1969 and 1977 which was 5 percent of the blacks who applied was the only evidence of transfers to the I.A.M. unit from the U.A.W. submitted

by any of the Respondents. Petitioners submitted evidence based on seniority lists that between 1969 and 1979, 15 blacks and 320 whites were either hired into or transferred to the IAM unit. (App. 62, 63) The Court found that based on that evidence there was no discrimination. The evidence was clear that U.A.W. and I.A.M. employees had the same right to apply for positions in either unit and they would receive said upgrades solely based on their experience.

When experience was the same the seniority in the unit applied. Employees would be automatically excluded from a job if they did not meet written standards for the jobs in both local unions. The standards were codified by General Electric through documents called Minimum Criteria Experience. No evidence was introduced by any party to prove that the Minimum Criteria Experience was job related. (App. 37) Between 1969 and 1977 white employees on the average received upgrades seven months faster than black employees in the U.A.W. unit. (App.79) The transfer of an employee from the I.A.M. to the U.A.W. or visa versa caused a loss of plant seniority as far as upgrades and downgrades but an employee did not lose his seniority with regard to

pension or other plant wide benefits. The Court would not permit evidence of transfer of black employees to the I.A.M. unit or attempts of new black employees to work in the I.A.M. unit prior to 1969 in order to show a discriminatory pattern by the company and the unions regardless of the seniority provision. The Court of Appeals affirmed the District Court's ruling excluding pre-1969 evidence.

DENIAL OF DISCOVERY

Evidence of the facts and figures of the affirmative action plan was not permitted by the Court. Even when the Petitioners attempted to profer said documents by subpoenaing them to make them part of their record, the Court sustained the objection to said proffer. (See App. 77) During the trial, General Electric had entered into a conciliation agreement with the Equal Employment Opportunity Commission concerning race discrimination nationally. The plant at Evendale was part and parcel of said settlement. The facts and figures of the affirmative action plan if permitted to be reviewed by this Court, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Fed. Rules Civ. Proc. Rule 34, 28 U.S.C.A.

(App. 53-54), would show a clear discriminatory pattern. While during discovery, petitioners were permitted to review numerous records of employees and submit them to a statician for review, this review only took place after the Court denied the affirmative action statistics.

FAIR TRIAL

In the Pre-Trial Order, Petitioner and Respondents had submitted all of the exhibits and listed all the witnesses which they planned to introduce and have testify at trial. At the conclusion of Petitioner's case, the District Court adjourned the trial for a period of nine months.

Thirteen days prior to the Defendant General Electric's having to submit their testimony, Defendant General Electric filed a motion to amend their Pre-Trial Order to include 13 new exhibits and several new witnesses which Plaintiff had not seen or had an opportunity to discover prior to the trial. The Petitioners objected strenuously to the introduction of this new material by filing a memorandum against the motion to the introduction of the new material. The District Court failed to rule on said motion until after the trial resumed, and then

permitted the new witnesses and the new exhibits. (App. 78) The respondent General Electric had nine months to prepare its defense to Plaintiff's evidence. To serve the Petitioners with the new exhibits and a list of new witnesses thirteen (13) days before they had to put on their direct evidence was not only discourteous but prejudicial to the Petitioners. The Court in permitting the evidence and not ruling on the Petitioner's Motion to Quash or exclude the evidence prior to trial resuming clearly denied the Petitioners the right to a fair trial.

The District Court found a prima facia case of discrimination against the U.A.W. and Local U.A.W. 647 in finding that the Union failed to process grievances filed by blacks alleging racial discrimination, or upgrade. Respondents Local 647 and the U.A.W. in its direct evidence produced numerous witnesses who testified that they treated black employee grievances in the same manner as white employee grievances. The U.A.W. and Local 647 respondents also attempted to introduce a statistical analysis which showed that black employee grievances were filed and processed in the same manner as white employee grievances. The statistical analysis

was labeled Exhibit 341. Exhibit 341 was excluded by the Court because Petitioners proved that the assembler of the statistics did not determine whether the grievant was black or white and, therefore, the analysis had no probative value whatsoever. However, Exhibit 342 included numerical statistics proving that the average grievance alleging any violation took approximately six months in order to reach the third step. This figure did not depend on whether the employee was black or white or the subject matter of the grievance.

In its rebuttal, Petitioner attempted to introduce Exhibit 342 in order to present evidence to the District Court that the statistics proved that the average time to process all grievances to a resolution was six months. Petitioner in rebuttal and in the direct evidence had submitted numerous exhibits (App. 56-60) to show that civil rights and upgrade grievances filed by blacks took over a year and a half to process to final resolution. The District Court would not permit Petitioner to introduce the statistical report which clearly proved discrimination by General Electric and the UAW Local 647 in the processing of civil rights grievances. In fact, the District Court permitted the UAW to withdraw

said exhibit in violation of the pretrial order permitting any party to use the other exhibits. (App. 71-75) Petitioners argued to the Court that the introduction of Exhibit 342 was clearly to prove that the evidence submitted by the U.A.W. and the U.A.W. Local 647 was pretextual. The Sixth Circuit Court of Appeals erred when they ruled nothing could be gained by allowing either party to introduce U.A.W. Exhibit 342. (App. 10)

The District Court held that the Petitioner had the burden to prove that General Electric's seniority system was "bona fide". (App. 67) The Sixth Circuit adopted this ruling by not specifically addressing the issue raised on appeal.

INDIVIDUAL ACTIONS

Not only did the Court of Appeals err in adopting the findings of the District Court concerning the class action but also clearly erred in the individual actions brought by the Petitioners. The Court of Appeals in its Opinion and Order never addresses whatsoever the issue of retaliation. We must assume then that it adopted the complete findings of the District Court.

In the District Court, the Honorable Judge Rubin never addresses the issue of retaliation and only devotes nine lines to all of the individual claims. (App. 43) Under Rule 52 of the Federal Rules of Civil Procedure, this finding is clearly erroneous and must be remanded to the District Court in order for the Court to make factual findings which the Petitioners should have a right to appeal.

MINIMUM CRITERIA

The statistical data relied upon by the Court of Appeals is clearly faulty in light of Connecticut vs. Teal, 73 L.Ed. 2d 130 (1982). Findings of the Court of Appeals that approximately five percent of the employees seeking transfer into the I.A.M. were black and that five percent of the applicants were black, is completely inconsistent with the findings in Teal, supra., which makes it clear that the obligation of Title 7 is to provide an equal opportunity for each applicant regardless of the race. Seniority lists admitted between 1969 and 1977 and those seniority lists excluded clearly showed an adverse impact of upgrades into the I.A.M. unit. The Court of Appeals decision (App. 19) while quoting

Teal concerning the "bottom line" adopts the findings of the District Court which are contrary to law. In finding that there was no showing of disparate impact, the Court of Appeals has discarded the findings of the number of blacks in the I.A.M. and that of the U.A.W. The Sixth Circuit in its opinion, confirms the District Court's finding that no evidence that the minimum criteria had a disparate impact on black employees or that the criteria was not job related was introduced at the trial level. (App. 18) This is not the Petitioners burden. In Dothard vs. Rawlinson, 433 U.S. 321 (1977) and in Albemarle Paper Company vs. Moody, 422 U.S. 405, (1975)at 1190, the burden shifted to the employer to show that the minimum criteria experience was job related.

ARGUMENT

Prelimitation Evidence

The crux of this Writ of Certiorari manifests itself in the failure of the Court of Appeals to understand the promotional and seniority system at General Electric and its discriminatory effect and impact. Evidence which should have been admitted at the District Court level to show the practices and policies which led

to the disparate impact were not permitted. The District Court's evidentiary rulings prevented evidence to be introduced of blacks being hired in menial positions prior to 1969 where they could not receive training on machines in order to qualify for I.A.M. positions. This clearly prejudiced Petitioners. Assuming the evidence had been permitted (the blacks were "hired on the broom" and white with less education and no more experience were hired on machines) the adoption and use of the Minimum Criteria experience in 1966 and thereafter by the company for both positions in the I.A.M. and the U.A.W. unit had a disparate impact against black employees. The findings of the Court of Appeals "the District Court consistently held that it would admit prelimitations evidence for the purpose of proving that Defendant's seniority system was not "bona fide" is not factual. (App. 9) The appendix attached hereto, pages 63 through 69 clearly and without a doubt reveals that the District Court would not allow any evidence of the maintenance of the unions for an illegal purpose. The District Court clearly limited any prelimitation evidence to the genesis of the system. Furthermore, the Court of Appeals

finding that individual discrimination which occurred prior to the applicable statute of limitations was correctly excluded by the District Court is in conflict with numerous other Court of Appeals decisions where individual discriminatory actions to show intention to discriminate even though prior to the statute of limitations was held admissable. (App. 9) Petitioner attempted to introduce numerous black employees who were to testify to the practice and pattern of General Electric and the I.A.M. to exclude blacks from the I.A.M. unit. This evidence was excluded. In James vs. Stockham Valves and Figging Company, 559 F. 2d 310 at 352 (C.A. 5, 1977), Herbert vs. Monsanto Company, 682 F. 2d 1111 (C.A. 5 1982), and also Wattleton vs. Boilermakers, 686 F. 2d 586 (C.A. 7, 1982), the Courts permitted both individual and general practices of the unions and the company of discrimination against blacks prior to the statute of limitations. When there is a conflict in circuits under U.S. Supreme Court Rule 17(a), 28 U.S.C.A., this Court should grant certiorari.

Evidence before this Court from the transcript (App. 63-69) clearly evidences that not only were individual acts of discrimination excluded but when on cross

examination, General Electric's chief operating labor officer was asked the question, "What was the upgrading procedure between 1948 and 1956," (App. 68) and, "Wasn't it true that all black employees or 98% of them were hired in janitorial positions in 1948," both questions were objected to by the Defendants and the objections were sustained based on the issue of prelimitation evidence.

While the Court agreed to permit evidence as to the creation of the two unions in terms of discriminatory intent, the Court makes it clear that it will not permit any evidence whatsoever on the maintenance of the system of either upgrading or seniority. This clear ruling conflicts with not only Court of Appeals decisions but the decisions of this Court in Teamsters vs. The United States, 431 U.S. 324 at 348 through 355 (1977) and Pullman-Standard vs. Swint, 102 Sup. Ct. 1781 (1982) at 1986 where this Court adopts the fourth test initiated by James, supra, the fourth test being "whether the system was negotiated and has been maintained free from any illegal purpose." Wherefore, not only is the Court of Appeals of the Sixth Circuit in conflict with other circuits, but under U.S. Supreme Court Rule 17(c), 28

U.S.C.A., the Court of Appeals decision in finding the District Court did not abuse its discretion, has decided a federal question in conflict with applicable decisions of this Court.

FAIR TRIAL

The hearthstone of any trial is that it shall be fair to all parties involved. The failure of Judge Rubin, to rule on Petitioner's Motion to Quash the new exhibits and new witnesses which General Electric provided to Petitioners thirteen (13) days before they had to put on their direct evidence clearly denied Petitioners a fair trial. Petitioners could in no way discover all the material in the new exhibits prior to said trial. The time and expense of pursuing new depositions and new discovery was impossible. We must assume that the Court of Appeals in the Sixth Circuit found that Petitioners had not been prejudiced by the actions of the District Court because they did not even comment on this issue which was raised on appeal. Actions of the District Court so departed from the accepted and usual course of judicial proceedings and the Court of Appeals sanction/such a departure, must cause this Court to

exercise its power of supervision. U.S. Sup. Ct. Rule 17(a), 28 U.S.C.A.

EXHIBIT 342

Not only did the above evidentiary ruling of the Court prejudice the Petitioners, but the refusal to allow Petitioners to introduce U.A.W. Exhibit 342 to prove officials of the UAW Local 647 testimony was pretextual clearly violated McDonnel Douglas Corporation v. Green, 411 U.S. 792 (1973) and numerous cases decided by this Court which permits Petitioners on rebuttal to show that the evidence articulated by the Union was nothing more than a falsehood. The Court of Appeals of the Sixth Circuit (App. 10) in finding that "nothing could be gained by allowing either party to introduce evidence (Exhibit 342) with such a critical flaw did not understand the issue raised on appeal." The testimony of Samuel Allmond, a U.A.W. committeeman (submitted in Petitioners' case in chief), established that the average time for a grievance to reach the third step was five to six months. Petitioners also introduced evidence that civil rights grievances took one and one half years to process to the third step.

This fact alone established a prima facia case of discrimination. The provision in both union contracts between 1969 and 1976 which did not permit the arbitration of civil rights except by mutual consent of company and union, while neutral on its face had a discriminatory impact against black employees and was in clear violation of the Civil Rights Act of 1964, 42 U.S.C.A. 2000e(3).

DISCOVERY

The Sixth Circuit Ruling not permitting discovery of the facts and figures of General Electric's affirmative action plan conflicts directly with the Fifth Circuit in Burns v. Thiokol Chemical Corporation, 483 F.2d 300 (C.A. 5, 1973), Rick v Martin Marietta Corp., 522 F.2d 333 (C.A. 10, 1975),and numerous district court decisions. The law is well established that discovery of the facts and figures is essential to a civil rights class action.

INDIVIDUAL ACTIONS

a.) Retaliation

Petitioners John Cooper and John Stevenson,alleged

in their individual cases retaliation by U.A.W. and General Electric. The Court held that under the charge of retaliation, the evidence is confined to whether or not an individual is treated differently because he is black. The Court says:

THE COURT: Mr. Tamarkin, it is relevant only in a comparative sense. Whether review board members take notes generally or not isn't important. Whether or not a specific employee is entitled to be present isn't important in this case.

What is important is if they treat him differently because he was black, and that's all I am really interested in.

MR. TAMARKIN: Your Honor, I beg to differ with you in a retaliation case.

THE COURT: Well, you may take your exceptions, and feel free to do so, but I am going to ask you to confine yourself to questions that relate to whether or not this man was treated differently because he was black.

The law is clear that harrassment, ridicule, or punishment to one who has opposed alleged discriminatory practices is evidence of retaliation; individuals need not

show that the actions of the union or Company are different because he is black. Hyland vs. Kenner Products Co., 13 F.E.P. Cases 1309, (S.D. Ohio, 1976); Pettway v. American Cast Iron Co., 411 F 2d 998, (C.A. 5, 1969).

b.) Rule 52

The failure of the District Court to make findings of fact and conclusion of law in accordance with Rule 52, Fed. Rul. Civ. Proc., 28 U.S.C.A., (App. 42) and the finding of the Sixth Circuit permitting the failure (App. 19) is in conflict with the following decisions. Denofre Transportation Insurance Rating Bureau, 532 F.2d 43 (C.A. 7, 1976), Russo v. Central School Dist. No. I, Towns of Rush, et al., Monroe County State of N.Y., 469 F.2d 623 (C.A. 2, 1972), certiorari denied, 93 S.Ct. 1899, 411 U.S. 932, 36 L.Ed. 2d 391, Kelly vs. Everglades Drainage Dist., 63 S.Ct. 1141, 1145, 319 U.S. 415 (1943).

CONCLUSION

Over 1,500 black employees worked at the General Electric Evendale plant between 1969 and 1977. A large percentage of these black employees were intentionally kept from obtaining high paying jobs both prior to and after 1969. When employees attempted to grieve this

denial, their plight was frustrated because of the conspiracy between the Company and the Unions denying black employees the right to arbitrate their grievance.

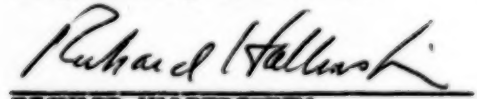
Between 1969 and 1978, 15 black employees were either transferred or hired into the IAM unit in contrast over 266 white employees were transferred or hired into the IAM unit. (App. 5) The Court of Appeals found on the facts that the IAM unit was higher paying and more stable. (App. 8)

The practices of the Unions and the Company in negotiating minimum criteria experience which is not job related and denying the transfer of seniority from one union to another cannot be permitted when the impact clearly demonstrates discrimination.

In the event this Court finds that the seniority system was not controlling (See Bryant vs. California Brewer's Association, 585 F. 2d 421 (CA9, 1978), because the upgrading of an individual did not depend on seniority unless all the persons who applied for the job had equal experience, then the Court's exclusion of pre 1969 evidence to show a pattern and practice which eventually led to a disparate impact is clearly erroneous.

This Court should remand the case to the District Court for a new trial.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to William Engeman, Esq., Attorney for Defendant-Appellee, General Electric, 600 Dixie Terminal Building, Cincinnati, Ohio 45202; Bernard Fox, Esq., Attorney for Defendant-Appellee, I.A.M., Local 912, 601 Gwynne Building, 602 Main Street, Cincinnati, Ohio 45202; and Walter L. Sales, Esq., Attorney for Defendant-

Appellee, U.A.W. International & U.A.W., Local 647, 312 River City Mall, Louisville, Kentucky 40202, by ordinary U.S. mail, this 15 day of November, 1982.

Richard Halberstein

RICHARD HALBERSTEIN

No. 80-3644

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN R. STEVENSON, et al.)		
Plaintiffs-Appellants)		C-1-77-122
vs.)		
GENERAL ELECTRIC COMPANY,) et al.,		
)		ORDER
Defendants-Appellees)		

BEFORE: ENGEL and CONTIE, Circuit Judges; and TAYLOR, District Judge.*

This appeal stems from a class action employment discrimination suit brought in 1977 under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., and under 42 U.S.C. §§1981 and 1985, by present and past black employees at the General Electric jet engine manufacturing facility in Evendale, Ohio. The defendants/appellees are General Electric (GE) and the two unions which represent hourly employees in the Evendale

* The Honorable Robert L. Taylor, United States District Judge, Eastern District of Tennessee, sitting by designation.

plant: the United Auto Workers (UAW) and the International Association of Machinists.[1/]

The plaintiffs' claims against the unions assert that grievances of black members in the UAW were treated in a less favorable manner than those of white members and that both unions failed to negotiate fairly on behalf of their black members. The heart of the plaintiffs' case, however, implicates GE's procedures and practices with regard to promotions within the UAW and IAM bargaining units and with regard to transfers from the UAW unit to the IAM unit. The plaintiffs alleged both disparate impact and disparate treatment claims with regard to promotions and transfers.

Following a non-jury trial, the district court found for the defendants on all counts. The plaintiffs' claims on appeal can be divided into five broad categories. They contend that the district court erred in: (1) limiting discovery; (2) making certain evidentiary rulings; (3) its factual and legal conclusions with regard to the claims against the unions; (4) its factual

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1/ The plaintiffs named the union locals and internationals as defendants, with the bulk of the claims directed against the locals. For simplicity, we will refer to the locals and internations collectively as the UAW and IAM.

and legal conclusions with regard to discrimination in promotions and transfers; and (5) its factual and legal conclusions with regard to the individual claims of discrimination.

BACKGROUND

GE has manufactured jet engines at its Evendale plant since 1948. In 1949, the National Labor Relations Board conducted proceedings to determine the appropriate bargaining unit or units for hourly employees at the plant. GE sought to have all hourly employees, including clericals, defined as a single bargainint unit. However, the UAW sought to represent all production workers, skilled and unskilled, while the IAM sought to represent only skilled workers. The National Labor Relations Board decided that there should be two bargaining units. The UAW was duly selected to represent unskilled production workers and the IAM was selected to represent skilled workers.

The UAW and the IAM have since negotiated separate collective bargaining agreements with GE but the separate contracts have always contained similar grievance procedures. Under both contracts, an employee's grievance

goes through a three-step procedure where representatives of the company and the union attempt to resolve the grievance. If no agreement is reached, the parties may demand final and binding arbitration. Prior to 1976, several subjects, including race discrimination, could only be arbitrated by mutual consent.

The collective bargaining agreements of both unions also contained similar seniority provisions. The key provision with regard to seniority is that an employee who transfers from a position in one bargaining unit to a position in the other bargaining unit must forfeit his competitive seniority.[2/]

GE has 130 job classifications, which are separated into 14 pay grades. Within the pay grades, certain positions are UAW represented and others are IAM represented. There are fewer IAM positions, but they tend to be higher paying and more stable. The lowest paying positions are in Grade 12, the highest paying are in Grade 25. Over

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2/ Competitive seniority refers to priority in layoffs, promotions, and upgrades. It does not affect vacations, retirement, or other fringe benefits. Any reference to "seniority" in this order is to competitive seniority.

80% of all newly hired employees enter GE's workforce at Grade 12. These employees then receive automatic promotions to Grades 13 and 14, with further promotions determined on the basis of seniority and merit. It is the promotions to Grade 15 and above which are at issue in this case.

GE utilizes and has utilized throughout the relevant time period for this suit a pre-registration system for promotions. Under this system, an employee files a request for an upgrade to any particular position or positions whenever the employee becomes interested in such positions. Position vacancies are not posted since it is irrelevant whether a vacancy actually exists under the pre-registration system. When a vacancy does occur, those employees who have filed upgrade requests and met the minimum qualifications for the position will be considered.

The pre-registration system works as follows. On the upgrade request form, the employee lists his relevant work experience and shift preference. The form directs an employee who does not know the qualifications for a position to consult his foreman, who is supplied

with a "Minimum Criteria Booklet." This booklet lists the minimum qualifications for each job classification.

The upgrade request is reviewed by an employment specialist who compares the relevant work experience listed on the form to the minimum criteria for the job. If the applicant is qualified, the upgrade request is marked "will consider" and is filed. When an opening for that position occurs, the senior qualified employee with an upgrade request on file is interviewed by the supervisor for the vacant position. In addition to the interview, a written test may be given. There is no "passing" score on the test--an interviewer may offer the job irrespective of the test score. Some positions also require practical tests related to skills necessary for those positions.

The supervisor does not interview all qualified applicants and pick the best qualified among them, but rather is required to take the most senior applicant capable of performing the job. If the most senior employee is rejected, the interviewing supervisor must file a written report to the employment specialist, who reviews the decision. Rejected applicants may also file

grievances. Black employees have the additional option of appealing to GE's Minority Relations office.

In order to help employees to qualify for upgrades, GE offers various training programs. These programs are open to all employees.

DISCUSSION

I. Discovery

The plaintiffs raise several issues with regard to discovery. One of these contentions relates to the plaintiffs' effort to compel GE to produce its Affirmative Action Plans for the period 1973 to 1978. The district court denied the motion to compel on the grounds that the privileged information in the reports outweighed the plaintiffs' need to see them.

A trial judge has wide latitude in discovery matters, and should only be reversed for clear abuse of discretion. H.K. Porter Co., Inc., v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1119 (6th Cir. 1976). We find no such abuse of discretion here. Employers are required by federal law to submit Affirmative Action Plans in order to receive federal contracts. The usefulness of such reports depends to a large degree on the

employer's subjective evaluations of its own progress. Making such reports subject to wholesale production in litigation would surely have a chilling effect on the employer's candor and greatly diminish the value of the reports. See Jamison v. Storer Broadcasting Co., 511 F. Supp. 1286 (E.D. Mich. 1981); Nash v. City of Oakwood Ohio, 90 F.R.D. 633 (S.D. Ohio 1981); and O'Connor v. Chrysler Corp., 86 F.R.D. 211 (D. Mass. 1980).

Of course, the plaintiff must have access to the factual data relating to the employer's hiring practices. In this case, the plaintiffs had access to this information through GE's personnel files and other information obtained through discovery. Since the plaintiffs had full access to the data relevant to this action, we find no prejudice and no reversible error in refusing to compel production of the Affirmative Action Plans.

We likewise find no merit in the balance of the plaintiffs' claims relating to discovery.

II. Evidentiary rulings

Evidentiary rulings by a trial court as to the exclusion or admission of evidence constitute reversible

error only if a substantial right of the party is affected. Fed. R. Evid. 103(a). The plaintiffs challenge several of the district court's evidentiary rulings but we find no reversible error.

One claim raised by the plaintiffs is that the district court erred in excluding evidence of individual discrimination which occurred prior to the applicable limitations periods for the discrimination claims. It is well-settled that current discrimination cannot be proven by reference to acts of pre-limitations discrimination.[3/] United Air Lines Inc. v. Evans, 431 U.S. 553, 558 (1977). Such evidence may be admissible as background evidence. Id.

Pre-limitations evidence may also be admissible if it is relevant to an issue in the case. See e.g. Detroit Police Officers' Ass'n v. Young, 608 F.2d 671 (6th Cir. 1979), cert. denied, 452 U.S. 938 (1981). The district court consistently held that it would admit pre-limitations evidence for the purpose of proving that the defendants'

3/ Even if it were admissible, evidence of a few isolated instances of discrimination over a twenty year period would have little probative value in establishing a pattern or practice of racial discrimination. Teamsters v. United States, 431 U.S. 324, 336 (1977).

seniority system was not bona fide. See Teamsters v. United States, 431 U.S. 324 (1977). We find that the district court did not abuse its discretion in excluding evidence of pre-limitations discrimination which was not relevant to any issue in dispute.

Another evidentiary ruling cited as error by the plaintiffs is the district court's refusal to allow them to introduce UAW Exhibit 341 on rebuttal. We find no error. The UAW had intended to introduce the exhibit during its presentation but did not do so when it was demonstrated that the study did not accurately reflect the race of grievants. Nothing could be gained by allowing either party to introduce evidence with such a critical flaw.

The plaintiffs also contend that the district court improperly excluded hearsay statements made by Edward Geiss and William Garnes, both deceased. The plaintiffs argue that statements made by Geiss and Garnes were admissible under Rule 804 of the Federal Rules of Evidence because the declarants were unavailable. We find that the district court did not abuse its discretion in excluding the evidence. The dead declarants were obviously

unavailable. However, the plaintiffs had to establish that one of the exceptions under Rule 804(b)(1-5) applied before the hearsay statements could be admissible. The plaintiffs failed to do this and the district court properly exercised its discretion in excluding the evidence.

We find no merit in the balance of the plaintiffs' claims with regard to evidentiary rulings.

III. Claims against the UAW and IAM

The plaintiffs claimed that the UAW and IAM engaged in a pattern and practice of discrimination against black members. More specifically, they claimed that the UAW did not process grievances filed by black employees in the same manner as those filed by white employees, that the UAW excluded black members from speaking at union meetings, and that the UAW and IAM did not negotiate fairly on behalf of their black members.

The district court made detailed findings of fact with regard to the grievance procedures, and we find that these findings are not clearly erroneous. The district court found that the grievance procedure at GE was marked

by long delays but that the delays were the same for black and white employees. The district court also found no evidence indicating that grievances filed by black employees were processed differently than those filed by white employees.

With regard to preventing black employees from speaking at union meetings, the district court found that one committeeman utilized a parliamentary technique to prevent black and white employees from presenting their views. The court found the actions of the one committeeman insufficient to establish a pattern or practice of racial discrimination.

The plaintiffs' claim that the unions failed to negotiate fairly on behalf of black members is based on the fact that, prior to 1976, race grievances were only arbitrable upon consent by GE. The district court found no evidence of a failure to negotiate fairly and we affirm.

We affirm the district court's conclusion that the plaintiffs failed to prove any of their claims against the unions.

IV. Claims against GE

The plaintiffs claimed that GE has engaged in a

pattern or practice of racial discrimination against black employees with regard to upgrades within the UAW[4/] and from the UAW to the IAM. The plaintiffs also attached GE's promotional and training system as having a disparate impact on black workers.

Looking first at upgrades within the UAW, the district court found that black employees comprised approximately 20% of the UAW work force in the plant during the relevant time period. An analysis of all upgrades to Grade 15 and above during that period revealed that black employees received 24.87% of the upgrades. Since discrimination could occur in particular pay grades without resulting in any overall disparate impact, the district court further analyzed each pay grade. Only two pay grades exhibited less balck promotions than expected, Grades 20 and 23. In Grade 23, which only had one job classification, the district court found that no black employee had ever been rejected after interviewing for the position. In Grade 20, the district court examined each job classification and found no evidence of racial discrimination.

4/ The plaintiffs presented no evidence as to upgrades within the IAM.

The plaintiffs contend on appeal that they established that black employees within the UAW were not upgraded as fast as white employees. We find no merit in this contention. The only evidence relied on by the plaintiffs in support of this claim was a statistical study which the plaintiffs admitted was factually flawed. The study was further flawed in that it did not distinguish between promotional movements and seniority-controlled movements. See Alexander v. Aero Lodge No. 735, etc., 565 F.2d 1364 (6th Cir. 1977), cert. denied, 436 U.S. 946 (1978).

The evidence as to upgrades through transfers from the UAW unit to the IAM unit similarly failed to show any disparate impact on black employees which would support a claim of a pattern or practice of discrimination. During the relevant time period, approximately 5% of the employees seeking to transfer into the IAM were black. During that period, 5% of the applicants accepted were black. The plaintiffs failed to introduce any substantial evidence that black employees were discouraged from applying. See Teamsters v. United States, 431 U.S. 324, 361-72 (1977).

The plaintiffs contend that the fact that the IAM has a lower percentage of black employees than the UAW supports an inference of racial discrimination. We initially note that there is little evidentiary support in the record to support the plaintiffs' premise that the IAM unit has a lower percentage of black workers. Even assuming that premise to be true, it is, by itself, inadequate to establish a prima facie case. The jobs in the IAM unit required specialized skills and training and a mere disparity in numbers is inadequate to establish a pattern or practice of racial discrimination absent a showing of a pool of black workers qualified for IAM jobs. Grano v. Dep't of Dev. of City of Columbus, 637 F.2d 1073, 1078 (6th Cir. 1980).

The plaintiffs also contend that the seniority system, which requires forfeiture of competitive seniority upon transferring from one bargaining unit to another, discriminated against black workers. Application of a bona fide seniority system is a defense against a showing of disparate impact even if the seniority system perpetuates the effects of past discrimination. 42 U.S.C. §2000e-2(h); Teamsters v. United States, 431 U.S. 324, 348-355 (1977).

Assuming that the seniority system was in issue, [5/] the findings of the district court clearly establish that the seniority system was bona fide. The Supreme Court has recently set out the key inquiry in determining whether a seniority system is bona fide:

> '[A]bsent a discriminatory purpose, the operation of a seniority system cannot be an unlawful employment practice even if the system has some discriminatory consequences.' Thus, any challenge to a seniority system under Title VII will require a trial on the issue of discriminatory intent: Was the system adopted because of its racially discriminatory impact?

Pullman-Standard v. Swint, _____ U.S. _____, 102 S. Ct. 1781, 1784 (1982). (citation omitted).

The district court found that the dual bargaining units and seniority systems were established in accordance with the order of the National Labor Relations Board, and that there was no evidence that the system was adopted because of any racially discriminatory intent. We note that there is no evidence that the system is anything but

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5/ As a defense, it only becomes an issue if the plaintiff establish a prima facie case. The findings of the district court indicate no disparate impace in transfers and no evidences that black workers were discouraged from transferring.

neutral in its application. The plaintiffs do not contend that white workers are allowed to transfer without losing their competitive seniority. There was also no evidence that the seniority system was maintained or negotiated for with discriminatory intent. Finally, we note that the division between skilled and unskilled workers was not unusual in heavy industry, as this court recently noted in Taylor v. Mueller Co., 660 F.2d 1116 (6th Cir. 1981).

The plaintiffs also claim that GE's upgrading procedures have a disparate impact on black workers—that is, the procedures are neutral in themselves but have adverse effects on black employees. The discussion above establishes that the "bottom-line" result as found by the district court was that the selection process had no disparate impact on black workers seeking upgrades. In the instances where the court did find a disparity, the defendant successfully articulated legitimate non-discriminatory reasons for the disparity, and these reasons were not demonstrated to be pretextual.

However, our inquiry does not end with the "bottom line" finding of no disparate impact. Components of the selection process which serve to unfairly eliminate black

workers from consideration for upgrades may violate Title VII despite the absence of a showing of disparate impact overall. Connecticut v. Teal, _____ U.S. _____, 50 U.S.L.W. 4716 (U.S. June 21, 1982). Such is not the case here. The district court analyzed each of the components of the selection process and found no evidence of discrimination. The district court found no evidence that the minimum criteria had a disparate impact on black employees or that the criteria were not job related. The district court also found no evidence that the use of the pre-registration system had any disparate impact on blacks. The plaintiffs argued on appeal that a system which does not post openings is per se discriminatory. This argument has no basis in law or logic. Since there was no showing of disparate impact, the fairness or wisdom of the system is GE's concern, not this court's. In any event, the pre-registration system seems to be fairer in that it does not rely on posting--employees do not have to constantly check to see if desired positions are open. The district court also found GE's training programs, interviewing procedures, and testing to be non-discriminatory.

With regard to all of the plaintiffs' claims against GE, the district court found that the plaintiffs failed to prove the allegations of their complaint. We have carefully examined the massive record on appeal and we find nothing to detract from the district court's factual findings or conclusions. The district court's findings are not clearly erroneous and we affirm.

V. Individual claims

The district court found the individual claims to be either time barred or unsupported by any evidence, and concluded that the individual plaintiffs had not met their burdens of proof. We find these findings not to be clearly erroneous and affirm the district court with regard to the individual claims.

Accordingly, the judgment of the district court is affirmed in all respects.

ENTERED BY ORDER OF THE COURT

Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN R. STEVENSON, et al.,)
Plaintiffs)
v.) No. C-1-77-122
GENERAL ELECTRIC COMPANY, et al.,)
Defendants)

O R D E R

This matter is before the Court following the presentation of evidence and testimony and the submission of memoranda by the plaintiffs and the several defendants. Plaintiffs in a class action proceeding assert discriminatory treatment of black employees in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and violations of 42 U.S.C. §§1981, 1985 and 1988. Pursuant to Rule 52 of the Federal Rules of Civil Procedure, the Court does submit herewith its findings of fact and conclusions of law.

I

FINDINGS OF FACT

A. BACKGROUND

1. Plaintiffs John R. Stevenson, John E. Cooper, Charles F. Sloan and Albert Cooper were at the time of the filing of this suit employees or former employees of defendant General Electric at its Evendale, Ohio facility. All plaintiffs are black males and seek to represent a class conditionally certified by the Court and described as follows:

> All past, present and future black employees at the Evendale, Ohio plant of the General Electric Company, who in promotion, transfer or seniority might have been discriminated against since July 1, 1965 or might be discriminated against in the future by the General Electric Company or by the International Union of Automobile, Aerospace and Agricultural Implement Workers (UAW) or by Local Union 647 UAW, or by Local 912 International Association of Machinists (AFL-CIO).

(Order of September 26, 1977, Document No. 34).

During the relevant time period[1] black employees constituted approximately 20% of the UAW hourly work force (Tr. 2757).

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[1] The term, "relevant time period," does not refer to the period of time beginning July 1, 1965. It refers instead to the period of time allowable for judicial consideration in accordance with appropriate statutes of limitation. See Findings A8 and A9, infra.

2. Defendant General Electric Company is a New Yrok corporation engaged in interstate commerce with facilities at Evendale, Ohio which develops and manufactures jet engines. The Evendale facility at all times relevant herein has employed in excess of 10,000 employees. The development and manufacture of jet engines inherently has at least two results that affect the relationship between defendant General Electric and its employees. First, jet engines require a work force of highly skilled employees. Second, demands for such engines, both commercial and military, tend to fluctuate widely from year to year. Such fluctuations are dictated by considerations beyond the control of the defendant General Electric.

3. The Evendale facility is located north of the City of Cincinnati in an area identified as the Milcreek Valley. The plant was constructed immediately prior to World War II for the production of airplane engines by the Wright Aeronautical Corporation. The site has been occupied by General Electric continuously since 1948.

4. Defendant International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Local 647 of the United Automobile,

Aerospace and Agricultural Implement Workers of America (Local 647) are labor organizations as defined in 42 U.S.C. §2000e(d) and (e). The UAW is an international union containing several hundred thousand members. Local 647 is a part of the UAW and represents for collective bargaining purposes certain employees at the General Electric Evendale plant.

5. The International Association of Machinists (AFL-CIO) (IAM) and Lodge 912 thereof are labor organizations which bear the same relationship to each other as UAW and Local 647.

6. In 1949 both the UAW and the IAM sought to represent employees at the General Electric plant. The NLRB determined that there should be two separate bargaining units and directed elections in each (General Electric Company 86 NLRB 327, 1949). As a result of the elections of the defendant UAW and Local 647 and defendant IAM and Lodge 912 were each certified as the representatives of separate bargaining units. UAW was certified to represent production and service operations, inspection service and the fabrication and welding of production components (Tr. 247). IAM was certified to represent developmental machinists, tool makers and maintenance skilled craftsmen

engaged in plumbing, pipefitting, electrical machine repair and millwright classifications (Tr. 246). Each collective bargaining unit maintains a separate contractual relationship with General Electric.

7. The collective bargaining agreements each have provisions detailing the seniority rights within that unit. Certain benefits, such as vacations, pensions, and income protection plans provided by the various labor agreements are controlled by an employee's total service with General Electric. His competitive seniority in consideration of promotion or upgrades, lay-offs, bumping, and recalls are determined by his employment within the specific bargainint unit. Only these rights are lost upon the transfer from one bargaining unit to another.

8. Plaintiff John Stevenson filed a charge of discrimination against defendant General Electric with the EEOC on September 2, 1969. He charged violation of Title VII of the Civil Rights Act of 1964. A "Notice of Right to Sue" was issued November 30, 1976 and this action was commenced March 2, 1977. The filing was timely and preserved plaintiff's and plaintiff's class recourse to the United States District Court. The above dates are relevant in determining what evidence may appropriately be received in

consideration of plaintiff's claims.

In 1969, 42 U.S.C. §2000e-5(d) required that Title VII charges be filed with the EEOC within ninety days of the alleged act of discrimination. Accordingly, the Title VII claims in this matter can only be directed to acts which occurred subsequent to June 4, 1969.

9. 42 U.S.C. §§1981 and 1985 do not contain similar time restrictions. Both claims are governed by appropriate state statutes of limitation. Claims under §1981 which arise in Ohio are governed by a six-year statute of limitations (Mason v. Owen-Illinois, Inc., 517 F.2d 520 (6th Cir. 1975).

In view of the determination by the Supreme Court of the United States in Griffin v. Breckenridge, 402 U.S. 88 (1971), it would appear that Section 1985 deals essentially with conspiracy to violate other civil right statutes including §1981. Accordingly, the Court will apply a six-year statute of limitations.

Application of the foregoing to the facts of this case requires the imposition of the following beginning dates: Evidence regarding Title VII claims are limited to acts subsequent to June 4, 1969. Evidence regarding

42 U.S.C. §1981 claims are limited to acts subsequent to March 2, 1971. Evidence of §1985(3) claims are also limited to acts subsequent to March 2, 1971.[2]

B. CLAIMS AGAINST IAM

1. The plaintiff has asserted discrimination claims against Lodge 912 of the IAM under 42 U.S.C. §§1981, 1985 and 1988 and failure of fair representation claims under 29 U.S.C. §§151 and 185.[3] No evidence[4] of a failure of fair representation or a failure to negotiate claims was presented against defendant IAM.

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[2] In view of the Court's determination that no evidence of a conspiracy was established at any time, the time limitation on §1985(3) claims is irrelevant. See Conclusion of Law C, infra.

[3] Claims under Title VII of the Civil Rights Act of 1964 were dismissed by stipulation against this defendant. See document 143.

[4] The phrase, "no evidence" will be used frequently in these findings. It is intended to be equivalent to a finding that plaintiffs have failed to sustain the appropriate burden of proof imposed upon them in employment discrimination matters.

2. Evidence regarding alleged violations of 42 U.S.C. §1981 involved incidents occurring prior to March 2, 1971 and in accordance with the analysis in Finding of Fact A-9 were excluded from evidence. No evidence of a conspiracy at any time involving defendant IAM was ever presented. As a result the Court did at the conclusion of the plaintiffs' case relieve defendant IAM from the presentation of a defense, but retained such defendant in the event a remedial Order would require its participation. The disposition of all claims against this defendant may be found in Conclusion of Law G.

C. CLAIMS AGAINST UNITED AUTO WORKERS AND LOCAL 647

1. Plaintiffs have asserted against Local 647 claims under 42 U.S.C. §§1981, 1985 and 1988, 42 U.S.C. §2000-e and 29 U.S.C. §§151 and 185. Against defendant United Auto Workers the same claims have been asserted with the exception of any claims under 42 U.S.C. §2000e. Plaintiffs' specific complaints against Local 647 may be summarized as an assertion of a conspiracy with General Electric; a failure to deal with grievances of black employees in an appropriate manner; a failure to negotiate in good faith and a failure to give black members

of the Union a fair hearing at union meetings.

2. As noted above, there has been a complete failure to establish any acts of conspiracy with either General Electric or with IAM that would give rise to a claim under 42 U.S.C. §1985(3).[5]

3. In theory a grievance should, if necessary, follow a logical progression from consideration by a shop steward with a first line supervisor to the formalities of arbitration between union and management before a disinterested umpire. However, this pristine mechanism merely provides the framework for processing grievances at General Electric.

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5 The seminal case on the consideration of §1985 claims is Griffin v. Breckenridge, supra. In the Breckenridge case the Supreme Court pointed out four specific requirements to support a claim. Those are: (1) a conspiracy; (2) for the purpose of depriving a person or class of equal privileges and immunities; (3) an act in furtherance of the conspiracy committed or caused to be committed by a conspirator; and (4) whereby the person or class was injured . . . or deprived of a right or privilege of United States citizens. The lack of any evidence at any time supporting a conspiracy renders it unnecessary for the Court to consider the requirements of a §1985 claim other than to hold that no cause of action has been proved against any defendant under such section.

4. The grievance procedure at the General Electric plant followed the pattern of such grievance procedures generally. Grievances by their very nature lack the formality of complaints filed in the Office of the Clerk of the United States District Court. They are prepared and filed by individuals who frequently lack formal education of college level. They are often prepared in anger or in haste. They are not always grammatical. They may require interpretation and the vast majority are disposed of on the shop floor. Grievances, however, are understood by the parties who are affected by them and as a pragmatic matter, solve the problems involved.

The procedures at General Electric appear to follow the above pattern and are no better or no worse than those of plants of comparable size. The attention paid to grievances by shop stewards and committeemen vary with each steward and each committeeman. Some were preserved, some were not. Some were handled expeditiously, some were not.

5. No evidence was presented by either side as to the number of grievances actually filed during the relevant period. Indeed, such figure is probably not obtainable. Evidence was produced, however, that the grievances during

such time period were, at least, numerous. Testimony bearing upon the substantial number of grievances indicated that during the relevant time period the local union dealt with at least 10,000 written grievances (Tr. 2754-55).

6. Local 647 is organized with eleven committeemen spread over the three shifts of work. One of such committeemen estimated that he alone had over 2,800 grievances pending at one time (Tr. 2956). Other than to indicate the magnitude of grievances, it serves little purpose to seek a completely accurate count. While recognizing that the figure is probably substantially too low, the Court will assume a totality of 10,000 grievances.

7. During the relevant time period, Local 647 arbitrated fifteen grievances. Fourteen grievances involved individuals, ten white employees, four black employees (Tr. 2753).[6] The processing of grievances

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[6] While the foregoing figure was noted primarily to demonstrate how few grievances ever reached the arbitration phase, it might be pointed out that while blacks constituted approximately 20% of the bargaining unit (Tr. 2757), over 28% of the arbitrations involved black members. In view of the small numbers involved, the Court does not deem this figure to have any significance.

at the General Electric plant seems to be inordinately slow. The delays, however, were the same for black and for white employees. In some instances, delay occurred because the number of filings overwhelmed the grievance procedure (Tr. 2806-07) and in other instances, delay seemed to be a technique of negotiation employed by committeemen in an effort to obtain a favorable result. Grievance procedures do not lend themselves to judicial oversight. Appropriate inquiry is whether or not grievances by black employees were treated differently than grievances by white employees. In the absence of any evidence so indicating, the processing of grievances is not relevant to the case at hand. Other than isolated instances of failure to file grievances by committeemen (Tr. 529 and 3540-41), no evidence was presented by the plaintiffs on this issue.[7]

8. Plaintiffs assert that Local 647 improperly handled grievances in instances where the grievants were black. To support this claim, the plaintiffs presented testimonial evidence of individuals who were dissatisfied

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[7] Even if a steward deemed a grievance meritless, a grievant could, and in some instances did, file a grievance on his own.

with the disposition of their grievances. Fewer than 50 specific grievances were discussed by those witnesses.

The grievances themselves presented no pattern of discrimination against blacks by the union. Many of the grievances were filed prior to or referred to events which occurred prior to the applicable time frame of this litigation. For example, one witness testified that he filed a grievance in 1974 regarding 1961 events (Tr. 1158). Not all of the grievances testified to alleged racial discrimination (Tr. 527, 533, 1158, 3541). Some witnesses also testified about grievances in which they were not the grievants. This hearsay testimony had little value for the Court.

9. No evidence was presented that the International Union was ever involved in the processing of grievances. A right does exist within internal union remedies to seek the assistance of the Executive Board of the International Union in the processing or failure to process grievances. No evidence was presented that any of the class plaintiffs protested the failure of Local 647 to properly prosecute a grievance (Tr. 3025). No evidence was presented indicating any responsibility on the part of the International

Union to intervene in the processing of grievances at the General Electric plant.

10. The treatment of Wilber Downs as Chairman of te Fair Practices Committee is asserted by plaintiffs as evidence of discriminatory treatment by Local 647. Evidence disclosed that Downs was frustrated in his effort as Chairman of the Fair Practices Committee, but the evidence likewise indicated that the activities of such committee interfered with the grievance procedure (Tr. 1257). The International Union has maintained since 1946 a Fair Practices and Antidiscrimination Department and William Oliver, a black, has been either director or co-director since that time. At no time was any complaint received by him either from a member of Local 647 or from Wilber Downs regarding discrimination by the local union.

The International Union published a handbook entitled Local Union Fair Practices Committee (Plaintiffs' Exhibit 49). The handbook does not permit the Fair Practices Committee chairman to negotiate with company supervisors (Tr. 2996). Instead, the chairman of the Fair Practices Committee is expected to advise, counsel and assist elected committeemen (Tr. 2998).

11. Evidence was presented of a technique by at least one committeeman to prevent the discussion at Union meetings of black discriminatory problems. His actions were deliberate and purposeful and while he had taken similar action in situations involving white members, the result of his activities was to frustrate black members of the union from having a full airing of their complaints.

Union meetings are not always conducted with the decorum associated with a society of parlimentarians. A denial, however, of a union member to address the other Union members and to have his complaint heard is both a violation of the First Amendment and a violation of his rights under the Landrum-Griffith Act (29 U.S.C. §411(2).

The failure of Local 647 or the International Union properly to discipline the member in question involves such entities also in violation of plaintiffs' rights. These acts, however, standing alone, are insufficient to establish discrimination against the class which plaintiffs seek to represent. They are acts which should invoke disciplinary action within the Union. The failure to do so may bear upon future bona fides of these defendants.

12. During a strike in 1969 approximately 100 local members crossed picket lines. Black member Herbert Green was fined $100.00 as a result. No evidence was presented that his punishment was different from that given to white members who likewise crossed picket lines. To the contrary, evidence indicated that all persons who crossed the line were dealt with uniformly (Tr. 2835).

Other than the foregoing isolated instances, no evidence was presented that would indicate a pattern or policy of discrimination by Local 647 against black members thereof.

D. CLAIMS AGAINST GENERAL ELECTRIC

1. Against defendant General Electric the plaintiffs have asserted eighteen types of discriminatory treatment which can conveniently be categorized as "asserted disparate treatment." Within the eighteen specifications of disparate treatment plaintiff does not include claims under 42 U.S.C. §§1985 and 1988 (F.P.T. Order, Item IV A(1), pp. 3, 4 & 5). In view, however, of the Court's determination of the conspiracy charge under §1985 such disposition need not be repeated here.

2. During all of the relevant time period herein, hourly employees at General Electric could at any time request consideration for a particular job occupation. It was not necessary that there be a job opening in order for an employee to express his interest. Prior to 1974 a promotion application was made on a "Request for Upgrade" (RFU Form). In 1974 the title of the form was changed to "Self-Nomination for Upgrade" (SNU), but the procedure remained the same.

Jobs at General Electric are identified with an "R" for UAW jobs and an "M" for IAM jobs. The categories range from the entry level of R-12 in UAW jobs to R-24 and from M-15 as an entry level in IAM jobs to M-25. Aside from certain automatic upgrades in the R-12 through R-14 categories, all job classifications have written minimum experience prerequisites known as "minimum criteria" which must be met prior to consideration for a promotion. There was no evidence presented that the criteria have a disparate impact on black employees or that they were not job related.

3. Details of the promotion system were widely disseminated through the plant and no evidence was presented that plaintiffs or plaintiffs' class were ignorant

of the manner in which a request for promotion could be made. Evidence was presented that approximately 26,000 SNU's had been filed since 1974 (Tr. 1866). No evidence was presented that a disproportionate number of such SNU's had been filed by white employees.

4. All SNU's after filing are considered by an hourly employment specialist. If he determines that the listed experience does not meet the minimum criterion, the SNU is marked "Not Qualified." If the marked experience would be sufficient but cannot be verified, it is likewise marked "Not Qualified." Where there is either a lack of qualification or a lack of verification, the employee is given an opportunity to obtain verifying documents. If he obtains such documents, the SNU is then marked "Will Consider" along with those SNU's where the minimum criteria has been met. In all instances, the disposition of the SNU is made known to the employee.

5. When an opening in the job classification occurs, the most senior employee with "Will Consider" SNU on file is referred for an interview. In certain instances, a test must be given prior to interview, but

such tests are written, not oral, with the exception of those tests involving tool making and welding proficiency. With the exception of the welding proficiency test, no employee is denied an interview because of test results. Applicants who are rejected because of interview may file a grievance, seek review through his supervisor, the hourly placement office, or General Electric's Minority Relations Office at the Evendale plant.

The foregoing procedures are facially neutral and contain no restrictions on the equal promotion of white and black employees.

6. General Electric provides training programs at its own facilities. Both standard training courses and advanced or special training courses are provided. Information regarding such training is contained in a pamphlet entitled "Your Guide to Growth" made available to employees (G.E. Exhibit 27).

Between 1969 and 1977 black employees constituted 29.79% of participants in standard training courses and 34.8% of special training courses (G.E. Exhibit 34, Tr. 2429).

7. In addition to the foregoing, there is maintained an individual developmental program (IDP) at local

vocational schools and colleges (Tr. 2423-24). Between 1973 and 1975 black employees constituted 32% of the participants in this program and 49% of the funds that were expended in the IDP program were for black participants (G.E. Exhibit 33).

8. As previously noted in Finding of Fact A-1, black employees at General Electric in the UAW bargaining unit constituted approximately 20% of the total hourly employees in such unit. Promotions therefor to the level of R-15 and above should approximate the same percentage.[8]

An analysis of the promotions to R-15 through R-24 from January 1, 1969 to March 2, 1977 is as follows:

Labor Grade Promoted To	Total Promotions	Black Promotions	% Black Promotions
R-24	1	1	100.00
R-23	11	0	0.0
R-22	0	0	0.0
R-21	51	13	25.49
R-20	136	17	12.50
R-19	180	33	18.33
R-18	235	47	20.00
R-17	437	110	25.17
R-16	185	52	28.11
R-15	670	201	30.00
Totals	1906	474	24.87

(G.E. Ex. 26, Chart III

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8 Promotions below R-15 are usually automatic based upon application and seniority (Tr. 2213).

9. With the exception of Labor Grade R-20, where the black percentage of promotion was 12.50% and Labor Grade R-23, where the black percentage of promotion was 0%, all other grades included a percentage approximating or exceeding 20%. Job Grade R-23 contains only one occupation - tool and gauge inspector. No evidence was presented that any black employee was rejected after interview for such occupation.

Detailed evidence regarding the R-20 classification is as follows:

CHART IV

G.E. Exhibit 26

PROMOTIONS INTO LABOR GRADE R-20
OCCURRING BETWEEN 1/1/69 and 3/2/77
BY OCCUPATION AND RACE 9/

Occupation Number & Title	Total	Black	Black %
20540-Precision Boring Machines	23	9	39.1
a 03220-Ultra Sonic Technician	6	0	0.0
46070-Automatic Technician-A	3	1	33.3
a 24131-Lathe-N/C	32	2	6.3
a 24140-Om-Ni-Mill-N/C SU&O	2	0	0.0
a 25005-Milling Machine-Multi-N/C	1	0	0.0
b 24021-Boring Mill-Vertical-N/C	13	2	15.4

9/ The interior footnoting of the above chart was not part of the exhibit but rather a result of testimony by Neil Churchill.

c	17021-Tester-Electronic	9	1	11.1
d	47020-Balancing Machine SU&O	3	0	0.0
e	57030-Welder Production	43	2	4.7
f	01136-Group Leader, Inspection Line	1	0	0.0
	TOTAL . . .	136	17	12.50

a - No black rejections

b - 1 black rejection out of five

c - 2 out of 4 blacks rejected; 17 out of 30 whites rejected

d - 3 out of 6 blacks rejected

e - 10 black applications rejected; 56 whites rejected

f - Appointed by management; RFU/SNU not applicable

An examination of the above chart reveals no rejection because of race which is in the final analysis of the dispositive question.

10. Transfer of UAW employees to the IAM bargaining unit has always resulted in a loss of seniority. During the relevant time period 245 applicants sought such transfer. Of that number, 13 were black for a percentage of 25.3%. 101 of the applicants were accepted, of whom five were black, for a percentage of 5.0%.

11. Evidence was presented of a study conducted of 3,069 employees of whom 754 or 24.6% were black. During the period January 1, 1969 to March 2, 1977, 1,063 of these employees were promoted. 288, or 27.1% were black employees.

While both sides presented additional voluminous statistics, the Court has considered them in light of the admonition of the Supreme Court of the United States in Teamsters v. United States, 431 U.S. 324 that "their usefulness depends on all the surrounding facts and circumstances." Supra at 340.

E. INDIVIDUAL CLAIMS

Four of the named plaintiffs, John Stevenson, John Cooper, Albert Cooper, and Charles Sloan, made individual allegations of discrimination, harassment, and retaliation in addition to the class claims. The plaintiffs did not meet the burden of proof regarding any of these allegations.

These individual complaints are either barred by the statute of limitations or largely unsupported by any evidence other than that individual's own testimony. In each

instance there is convincing contradictory testimony by the defendant.

II

CONCLUSIONS OF LAW

A. The Court has jurisdiction in this action pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and 42 U.S.C. §1981. All the jurisdictional prerequisites to the filing of a Title VI action have been met. Defendant General Electric is an "employer" and defendants Lodge 912 of the IAM and Local 647 of the UAW are "labor organizations" within the meaning of the statute.

B. The named plaintiff in this action, John R. Stevenson, filed charges with the EEOC on September 2, 1969. Where a litigant filed charges with the EEOC in 1969, he and the class he represents are limited to matters occurring no more than ninety days prior to such filing. All Title VII claims prior to June 4, 1969 are barred by the statute of limitations. See United Airlines v. Evans, 431 U.S. 553 (1977).

Claims brought under 42 U.S.C. §1981 and §1985 are governed by the appropriate state statute of limitations.

In Ohio, §1981 actions are governed by a six-year statute of limitations, Mason v. Owens-Illinois, 517 F.2d 520 (6th Cir. 1975). By logic, §1985 actions should be included in a six-year period, Carmicle v. Weddle, 555 F.2d 554 (6th Cir. 1977). All §1981 and §1985 claims prior to March 2, 1971 are barred by statutes of limitations.

C. To maintain a claim under 42 U.S.C. §1985, plaintiffs have a threshhold burden of proving the existence of a conspiracy. See Griffin v. Breckenridge, 403 U.S. 88 (1971). No evidence of any conspiratorial conduct by the defendants was presented.

D. The establishment of a prima facie case of discrimination in violation of Title VII of the Civil Rights Act of 1964 in accordance with McDonnell Douglas v. Green, 411 U.S. 792, is not the equivalent of a finding of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 567.

Where, as here, plaintiffs established a prima facie case, defendant successfully rebutted such case and plaintiff failed to demonstrate that defendant's rebuttal was merely a pretext for discrimination, plaintiffs' complaint for Title VII discrimination should be dismissed.

The failure to establish class claims of discrimination under 42 U.S.C. §1981 or individual claims of disparate treatment requires dismissal of such claims.

E. A grievance system in a large manufacturing plant dependent upon personal policies of numerous shop stewards, is not thereby discriminatory. In the absence of evidence of disparate treatment or impact or of racial motivation in the administration of such system, plaintiffs' claims in regard to such grievances should be dismissed.

F. In the absence of evidence of claims against defendant IAM during the relevant time period, such defendant should be dismissed.

G. Based on the evidence presented, the Court finds no discrimination, harassment, or retaliation by the defendants against these plaintiffs. Accordingly, the individual claims of John Stevenson, John Cooper, Albert Cooper, and Charles Sloan should be dismissed.

H. In view of Conclusions of Law A-G, inclusive, plaintiffs' complaint as to all claims and as to all defendants should be and it is hereby DISMISSED at plaintiffs costs.

It is so ORDERED.

Carl B. Rubin, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO

JOHN R. STEVENSON, et al., Plaintiffs	)	Civil Action File No. C-1-77-122
vs.	)	
GENERAL ELECTRIC COMPANY, et al., Defendants	)	JUDGMENT

This action came on for trial before the Court, Honorable Carl B. Rubin, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered.

It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed on the merits at plaintiffs' costs.

Dated at Cincinnati, Ohio, this 4th day of September, 1980.

JOHN D. LYTER
Clerk of Court

By: /s/ Rebecca E. Anderson
Rebecca E. Anderson, Deputy

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-3(a)

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-2(a)

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to

his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(c)

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employ-

ment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

42 U.S.C. § 2000e-2(h)

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an

intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such differentiation is authorized by the provisions of section 206(d) of Title 29.

42 U.S.C. § 2000e-2(j)

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such

individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Amendment V to the Constitution of the United States of America

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. §1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Fed. Rules Civ. Proc, rule 34, 28 U.S.C.A.

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30(b), the court in which an action is pending may (1) order any party to produce

and permit the inspection and coping or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation theron within the scope of the examination permitted by Rule 26(b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

As amended Dec. 27, 1946, effective March 19, 1948.

U.S. Sup. Ct. Rule 17(a)

When a federal court of appeals has rendered a decision in conflict with the decision of another

federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

U.S. Sup. Ct. Rule 17(c)

When a state court or federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

FEDERAL RULES OF CIVIL PROCEDURE, Rule 52, 28 U.S.C.A.
Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing

interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

TABLE I

LIST OF GRIEVANCES FILED BY BLACKS

EXHIBITS	NAME	FILED
Pl. Ex. 70	Buford Harvey	10/5/65
Nature: Upgrade		
Disposition: 3/3/67 - settled		
Pl. Ex. 226	Raymond Hughes	2/6/69
Nature: Upgrade		
Disposition: Pulled and held		
Pl. Ex. 99	W.L. Battiste	5/9/63
Nature: C.R.		
Disposition: Denied 1967		
Pl. Ex. 127	Melvin Satterwhite	9/10/65
Nature: Upgrade		
Disposition: 3/30/67 - pulled		
Pl. Ex. 128	S. Satterwhite	5/25/67
Nature: C.R.		
Disposition: 11/27/67 - denied		
UAW Ex. 171	John Cooper	2/6/78
Nature: C.R.		
Disposition: 1/1/80 - still pending		

Pl. Ex. 47(bb) Neze B. Tate 9/23/72

Nature: Downgrade

Disposition: 4/6/73 - requested arbit.

Pl. Ex. 151 Melvin Hayes 3/6/78

Nature: Upgrade

Disposition: Testing

UAW Ex. 120 John Cooper 4/22/71
(Pl. Ex. 39(a)

Nature: Upgrade

Disposition: 3/13/74 - forced settlement

Pl. Ex. 238&67 Group Grievance 1/22/75

Nature: Race

Disposition: 4/28/76 - denied

Pl. Ex. 47(m) Neze B. Tate 3/25/76

Nature: C.R.

Disposition: 11/12/76 - at second held

Pl. Ex. 47(c&m) Neze B. Tate 12/5/74

Nature: C.R.

Disposition: 12/12/75 - closed

Pl. Ex. 107 Louis Curtis 3//3/70

Nature: C.R.

Disposition: 1/24/72 - 3rd step

Pl. Ex. 66 Melvin Taylor 1/31/74

Nature: C.R.

Disposition: 10/3/75 - co. took back

Pl. Ex. 106 R. Crawley 8/5/69

Nature: C.R.

Disposition: 6/9/70 - third step

Pl. Ex. 61 J.L. Grayson 10/22/71

Nature: C.R.

Disposition: 12/6/72 - denied

Pl. Ex. 73 Wilbur Downs 4/16/71

Nature: C.R.

Disposition: 12/8/72 - denied

Pl. Ex. 275 R.H. Robinson 11/8/74

Nature: C.R.

Disposition: 4/1/77 - denied

Pl. Ex. 276 F.J. Wellman 12/30/70

Nature: C.R.

Disposition: 9/1/72 - denied

Pl. Ex. 278 Morris Lovette 6/7/72

Nature: C.R.

Disposition: 5/5/75 - settled

Pl. Ex. 279 Paul White 2/25/71

Nature: Downgrade

Disposition: 12/22/71 - denied

UAW Ex. 336 W. Wynn 6/19/73

Nature: C.R.

Disposition: 4/19/76 - settled

Pl. Ex. 118 G. Lee 6/19/70

Nature: C.R.

Disposition: 4/23/71 - union took back

B. Walker 1/21/74

Nature: C.R.

Disposition: 11/4/76 - settled

Pl. Ex. 102 J. Carrington 1/19/72

Nature: Upgrade

Disposition: 12/8/72

Pl. Ex. 347(a) A. Battle 4/5/74

Nature: C.R.

Disposition: 9/12/72 - union took back

Pl. Ex. 347(b) Neze B. Tate 4/25/70

Nature: C.R.

Disposition: 4/3/72

Pl. Ex. 347(d) Leon Walker 10/14/72

Nature: Upgrade

Disposition: 2/26/74

Pl. Ex. 347(e) Andrew Battle 9/20/71

Nature: C.R.

Disposition: 2/22/73

Pl. Ex. 347(f) Bobby Gaines 2/2/71

Nature: C.R.

Disposition: 3/15/73 - union took back

Pl. Ex. 272 Estelle Williams 7/14/70

Nature: C.R.

Disposition: 3/26/72 - denied

Pl. Ex. 349(a) S. Jackson 10/11/73

Nature: C.R.

Disposition: 2/6/75 - denied

Pl. Ex. 349(b) P. Knight 7/12/72

Nature: C.R.

Disposition: 2/9/76 - union took back

TABLE IV

COMPARISON OF WHITE AND BLACK EMPLOYEES
UPGRADED FROM UAW OR HIRED INTO IAM POSITIONS
FROM 1969 - 1978

Taken from 1978 IAM Seniority List

	Black	White
Electrician Maintenance & Repair	0	13
Electrician	1	25
Machine Repair	0	21
Locksmith	0	1
Mason	0	1
Millwright	1	23
Plumber & Pipefitter	1	21
Refrigeration and A/C Repair	0	10
Garage Man	0	1
Mechanic - Auto & Truck	1	3
Office Machine Repair	0	1
S/M Maintenance	0	3
Carpenter	0	1
Painter Maintenance	1	10
Machine Apprentice	2	18
Grinder Tool	2	39
Grind & Reset B/C	0	3
Machinist	5	72

Bench Repair Pts.	0	5
Welder Div.	1	18
Sheet Metal	0	21
El Tube & Noz Maker	0	7
Air Sup Op Turbo	0	3
TOTAL	15	320

A. The RFU system was planned and it was instituted approximately 20 years ago. That would be in late 1956 and the early part of 1957 the request for upgrade system was instituted.

Q. And that would be in both unions, both the IAM and the UAW?

A. That is correct, sir.

Q. And prior to that time, between let's say when the plant started in '48 and '56, are you aware what the system was at that time?

MR. ENGEMAN: Objection, Your Honor, time frame.

THE COURT: Sustained.

MR. TAMARKIN: Your Honor, I know, but I hate to make this comment for the record, that I believe we are going back to the genesis now of this system, and I believe it's relevant under evidence in Teamsters. I will proffer what I believe the answer would be.

THE COURT: You are free to proffer. (The following testimony was proffered into the record: I believe the system is that there was no written request of any type and individuals would be upgraded when the foreman requested or told them a job was open, and basically by word of mouth only. There was no minimum

criteria to meet at that time.)

BY MR. TAMARKIN:

Q. And during the period, sir, from 1948 through '52, isn't it true that all black employees, or 98 percent of black employees were hired in janitorial positions?

MR. ENGEMAN: Objection, Your Honor.

THE COURT: Sustained.

(The following testimony was proffered into the record: The answer would be yes.)

MR. TAMARKIN: Plaintiff's Exhibit 92. Your Honor, this is an exhibit dated '57, and I will just ask one question, and I will submit it to proffer.

MR. TAMARKIN: I agree with you --

THE COURT: This is a disparate impact.

MR. TAMARKIN: I agree with you, Your Honor, there are two issues, but I believe seniority does not deal with the genesis, but I believe some aspects of the seniority system deal with the maintenance of that system, and that's my position. I believe I have tried to put on some evidence to that effect.

THE COURT: I take the same position that I have heretofore as to that.

Gentlemen, do any of counsel wish to be heard on this?

MR. ENGEMAN: Your Honor, obviously we except to the ruling that he may be permitted to inquire into events in I assume you intend in 1949, which would be the genesis of the seniority system.

THE COURT: No, I am not permitting it as to seniority — well, now I'm beginning to get confused.

The creation of two unions is an appropriate inquiry in terms of discriminatory intent, and I will permit testimony bearing upon discriminatory intent. I think that events of 1949 are highly attenuated, but I won't go into that at the moment.

THE COURT: Mr. Tamarkin, I am simply not going to debate with you what your evidence is. I am saying to you if you wish to present evidence of a discriminatory intent as to the establishment of two unions, you may do so.

MR. TAMARKIN: Well, I must except then to the Court's ruling that I cannot show the maintenance of that system also.

THE COURT: Feel free to except to anything you would like to except to. That is the ruling I am proposing at this time.

MR. TAMARKIN: Then will the Court permit me to recall some witnesses to go into that subject that I have already put on the stand?

THE COURT: Mr. Tamarkin, I am telling you what my ruling is. You may call whatever witnesses you see fit.

MR. TAMARKIN: Thank you, Your Honor.

THE COURT: There is another critical issue that you have established. You are asserting these are non-bona fide seniority systems, and you may present evidence of that, but the evidence of non-bona fide is not acts of discrimination.

MR. TAMARKIN: One thing, Your Honor. In the Pullman case, the Fifth Circuit interpreted Teamsters, and they interpreted that the burden of proof shifts to the Defendants to prove a bona fide seniority system.

THE COURT: The Fifth Circuit is persuasive only. It is not binding on this Court and interpretations of Teamsters by other circuits are matters I look at with great skepticism.

I will make my point once more, and only once more. I will hear from this witness as to anything he wishes to testify to, but if it is acts of discrimination, it must be limited by the statute. If it is acts as to the bona fides of the seniority system, let it be that and not a disguise of the acts of discrimination.

MR. TAMARKIN: I believe the answer would be that the criteria was put in because of the objections of several minorities concerning the upgrading of individuals without any type of criteria.

(End of proffer.)

MR. TAMARKIN: I would like to hand the witness Exhibit 156, that's a group of seniority lists, Your Honor.

MR. ENGEMAN: For the record, Your Honor, while we are on 155, I will make the identical objection to 155-A, it's beyond the time-frame.

THE COURT: I'm sorry, I didn't hear the objection.

MR. ENGEMAN: I'm sorry, Your Honor, I wasn't speaking clearly. As we are on 155 and are leaving 155, I will make the objections I made to 154, that is, i.e., 155-A is irrelevant as beyond the time-frame.

THE COURT: At this moment, I'm inclined to agree with you. I think that the portions of Exhibit 154 covering the period 1966, 1967 and 1968 are not relevant. And the portions of 155 covering the period 1968 are not relevant. 1969 is peripherally -- may be relevant for one purpose and not for another. And I will sustain your objections as to those portions prior to 1969.

MR. TAMARKIN: I would proffer the document.

and I don't recall what series of discussions, I'm sure they occurred, but I can't recall what they were in '66.

THE COURT: I'm not interested in the details. I am trying to figure out how this came about. This was not solely developed by management, was it? Or was it?

THE WITNESS: Principally, yes, sir.

THE COURT: I see. And did it ever become part of negotiations with the Union as part of a collective bargaining agreement?

THE WITNESS: The minimum criteria are not referenced in the collective bargaining agreement.

THE COURT: Okay, you may proceed.

BY MR. TAMARKIN:

Q. Why was the minimum criteria instituted, sir, in 1966?

MR. ENGEMAN: Objection, your Honor. It's beyond the time frame.

THE COURT: Sustained.

MR. TAMARKIN: May I proffer the answer, your Honor?

THE COURT: Feel free.

(The following testimony was proffered into the record.)

What is the reason for the fact that the IAM unit was somewhere between 1 and 2 percent black in 1973?

MR. ENGEMAN: Objection, Your Honor. That is a question calling for a legal conclusion.

THE COURT: Well, I am going to overrule the objection. You may respond if you know the answer.

THE WITNESS: I am not aware of any purpose, business or otherwise.

MR. TAMARKIN: Many of the union witnesses testified to the fact, without supporting these things that the union treats whites the same as blacks.

Now, let me point out that the union gave me a witness list prior to their direct examination and gave it to the Court of over 34 witnesses, including all stewards and committeemen.

I suggest to the Court that I did the best I could in taking and trying to find out who was the most important witness in taking their depositions, but the cost of this case and the actions of the union in this matter and giving witness summaries and then not coming in with any of these people, and the only one of their people I did not call was Jerry Horton. I had to make a decision at that time which of these witnesses were important and what they had to do.

Mr. Horton may have been an oversight, but I did not call him for a deposition. They put him on and, of course, because I didn't take his deposition, I was not prepared to cross-examine him fully.

I do not believe that he himself ever testified to the fact of his time. He testified a lot about grievances. He had a statistical report ready to bring in time which shows something. He didn't put it on. I

don't believe I could have cross-examined him at that point on this.

But there has been numerous UAW witnesses who have testified to the general assertion that the UAW processes grievances for blacks the same as whites. The evidence I propose to elicit, which the Court has overruled, is that that is not true, that it takes six — that the average is five months; and I will submit civil rights grievances to show that they do take a lot longer, and I will do that if I can, but I believe it has been unfair to these plaintiffs in what the union has proceeded in this manner by giving me this list of witnesses and their summaries.

THE COURT: Mr. Tamarkin, I make the same point I made I believe this morning. If this case had proceeded as a case normally would, you would have been called upon to do rebuttal immediately after the end of plaintiffs' case —

MR. TAMARKIN: Yes.

THE COURT: — and I would have taken the same position then that I am taking now. Where you had the opportunity to cross-examine Mr. Horton, I do not believe it's appropriate that you recall him in rebuttal to do what could have been done on cross-examination.

THE COURT: You may proffer. I am not going to require -- Your position is the same as it would always be, incidentally, and that a proffer on cross-examination, my understanding under Ohio law at least, is not permitted. But go ahead. I will let you proffer whatever you want to say.

MR. TAMARKIN: I don't believe I am calling him on cross-examination. I believe I am calling him for one specific purpose, and that is to identify an exhibit, a UAW exhibit, and that is all.

THE COURT: What is that exhibit, Mr. Tamarkin, because he has not identified an exhibit that I am aware of.

MR. TAMARKIN: Exhibit No. 314 of my exhibits and it's the UAW exhibit --

MR. SALES: 342, I believe.

THE COURT: Just a moment.

MR. SALES: 341. Your Honor, that is the statistical analysis or part of statistical analysis that was prepared by Lee Price. Mr. Horton supplied the data from which that analysis was made by Mr. Price. That exhibit was withdrawn by the UAW. It was never admitted

into the testimony. It's not in the case to be rebutted at this point; and our position is very simply that, as you recognized, as you elicited from Mr. Horton, that you felt that the underlying data was simply too inaccurate to form any opinions based upon this analysis. And the analysis isn't in the record. We withdraw it formally. I stood up right there and withdrew it.

MR. TAMARKIN: Pardon me, your Honor. I disagree with that. What we put on the record was the fact we couldn't determine whether blacks or whites were filing the grievances; that the time analysis, it takes each individual grievance, no matter if they are black or white, and says what time will they be denied or settled at the third step. That is that. It doesn't matter if they are black or white on that determination because all the grievances take the same thing as the analysis that Mr. Horton was taking. That was not ruled out.

THE COURT: Well, just a moment. The only exhibit that I am aware of is 341, the statistical handling of grievances.

MR. TAMARKIN: 342.

THE COURT: I have 341.

MR. TAMARKIN: Yes, but 342 is the one I am referring to, time study.

THE COURT: If Mr. Sales says that has been withdrawn, then it's withdrawn. There is no need to rebut it. Now, are you denying that it was withdrawn?

MR. TAMARKIN: Yes, I am denying it was withdrawn.

THE COURT: Mr. Sales, do you wish to withdraw it at this time so there be no question?

MR. SALES: Your Honor, I believe I have already done it but, if needs to be done, I will withdraw it.

THE COURT: It is withdrawn. Now, Mr. Tamarkin, go on from there.

MR. TAMARKIN: Your Honor, my next witness -- now, I will go ahead -- I will check with my folks to see whether I should withdraw as counsel. As long as I am here, I will go ahead.

THE COURT: I do point out to you, Mr. Tamarkin, it is highly unlikely that I would grant such a motion. I think that is something less than proper. Call your next witness, please.

A. From my experience at General Electric Company, I knew that it was useless to apply for the IAM because with my time in the UAW, I would have to lose 26 years to go into the IAM.

Q. And when you first started at General Electric, sir, why did you not apply for an IAM position at that time when you didn't have to lose any seniority?

MR. BARTY: Objection

MR. FOX: Objection

THE COURT: Objection sustained until you determine what the date was that he was employed.

MR. TAMARKIN: It was back in '51, Your Honor.

THE COURT: Objection sustained

MR. TAMARKIN: I will proffer it.

(The following is a proffer by Mr. Tamarkin: The answer would be General Electric was only hiring blacks on the broom, and I needed a job, and they wouldn't hire any blacks into that unit whatsoever. So, it was a useless act.)

DEFENDANT GENERAL ELECTRIC CO.
SUPPLEMENTAL EXHIBIT LIST

GE 18 - Hourly Job Displacement and Upgrade Charts

GE 19(a) - Employee Conv. Report (W. Kelly)

GE 19(b) - Downgrade Report (W. Kelly)

GE 20 - Interview Guide (H. Greene)

GE 21(a) - Letter, R. Marcus to E. Carpenter (8/30/76)

GE 21(b) - Letter, R. Marcus to E. Carpenter (9/6/76)

GE 21(c) - Downgrade Memo (J. Penny)

GE 22(a) - Discussion Memo (S. Mays)

GE 22(b) - Exempt Placement Recommendation (S. Mays)

GE 22(c) - Letter, A. Sciarappa to D. Speakes (3/26/71)

GE 23 - SNU Reports (1974-77)

GE 24 - Study of Black/White UAW Upward Mobility 1-1-69 to 3-2-77, Dr. Neil Churchill

GE 25 - Professional Biography, Dr. Neil Churchill

GE 26 - Charts I-V, re B. Meyer Testimony

GE 27 - Your Guide to Growth Pamphlet

GE 28 - Apprentice Training Program Pamphlet

GE 29 - Individual Development Program Pamphlet

GE 30 - Affirmative Action Policy Guide No. 54

GE 31 - Class "B" Work Classification and Medical Restriction Card

GE 32 - GE/EEOC Conciliation Agreement

GE 33 - Individual Development Program Data (1973-75)

GE 34 - GE In-Plant Training (1969-77)

GE 35(a) - Self Nomination for Upgrading Card

GE 35(b) - Self Nomination for Upgrading Pamphlet

GE 36 - Mfg. Dev. Program Brochure

GE 37 - Mfg. Management Program Brochure

GE 38 - Apprentice Program Graduates (1969-77)

GE 39 - Foreman Assessment Center

CERTIFICATE FOR SERVICE

I hereby certify that I have served copies of the foregoing Motion of Defendant General Electric Co. to amend its Exhibit List upon Ivan L. Tamarkin, Esq., 1403 First National Bank Bldg., Cincinnati, Ohio 45202; Paul H. Tobias, Esq., 911 First National Bank Bldg., Cincinnati, Ohio 45202 by hand delivery this 5th day of November, 1979, and upon Herbert Segal, Esq., Third Floor, M.E. Taylor Building, Louisville, Kentucky 40202 by certified mail, return receipt requested, this 5th day of November, 1979.

THE COURT: Mr. Tamarkin, I will hear from you.

MR. TAMARKIN: Your Honor, the original subpoena was sent to General Electric and given to Mr. Barty on December 20, not the 27th.

I had a meeting with Mr. Engeman to discuss this, and we tried to work it out, and I reissued the subpoena on the 27th.

THE COURT: I know, but you are seeking matters that have been disposed of.

MR. TAMARKIN: I don't believe all of them have been disposed of.

THE COURT: But some of them have. For example, I heard the term affirmative action.

MR. TAMARKIN: I am only seeking it for the purpose of proffering it.

THE COURT: But you have no right to subpoena a matter that the Court has held to be inadmissible, have you?

MR. TAMARKIN: Yes, to proffer it, I believe I do.

THE COURT: I am going to sustain it as to that.

Now, I also heard references to the seniority

list. There is a huge stack almost a foot high on the desk.

Office - Supreme Court, U.S.
FILED
DEC 22 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-812

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

JOHN R. STEVENSON, CHARLES F. SLOAN AND JOHN E. COOPER

Petitioners,

v.

GENERAL ELECTRIC COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 912, INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 647 OF THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR GENERAL ELECTRIC COMPANY IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in the absence of any probative evidence of racial discrimination on or subsequent to June 4, 1969, the earliest date of the applicable statutes of limitations herein, regulation of admission of prelimitations evidence of alleged acts of discrimination and other pre-limitations matters is within the discretion of the District Court?

2. Whether the District Court may exercise discretion in regulating discovery and trial procedure in accordance with well-established rules governing the orderly trial of lawsuits?

3. Whether the Court of Appeals properly sustained the District Court's factual findings that the named plaintiffs did not meet their burden of proof regarding any of their individual claims because those claims were either barred by the statute of limitations or were largely unsupported by any evidence other than their own testimony, and where the District Court found in each instance there was convincing contradictory testimony by the defendant?

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v.

GENERAL ELECTRIC COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 912, INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 647 OF THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR GENERAL ELECTRIC COMPANY IN OPPOSITION

OPINIONS BELOW

The order of the Court of Appeals (Pet. App 1-19) will not be reported. The opinion and order of the District Court (Pet. App. 21-46) will not be reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 16, 1982. The jurisdiction of this Court is invoked under 28 U.S. Code § 1254(1).

STATUTES AND RULES INVOLVED

The relevant provisions of the Civil Rights Acts of 1964, 1866 and 1870, 42 U.S. Code § 2000e *et. seq.*, and 42 U.S. Code § 1981 respectively, and the Federal Rules of Civil Procedure are set forth in Petitioners' Appendix 48-55.

STATEMENT

On March 2, 1977, three black employees and one black former employee of the Respondent General Electric Co.[1] (hereinafter referred to as "GE") filed this action alleging race discrimination in employment at GE's Evendale, Ohio manufacturing plant. Named as defendants were GE; the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local Union 647 (hereinafter collectively referred to as "UAW"); and the International Association of Machinists (hereinafter referred to as "IAM").[2]

The District Court certified a class of all past, present and future black employees at GE's Evendale, Ohio plant who in promotion, transfer or seniority, might have been discriminated against since July 2, 1965 or might be discriminated against in the future by the defendants. Trial to the Court was held. The District Court entered its findings of facts, conclusions of law and judgment directing that the action be dismissed on the merits. The United States Court of Appeals for the Sixth Circuit affirmed.

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[1] In accordance with Supreme Court Rule 28.1, a list of affiliated companies is included as an Appendix to this Brief.

[2] On July 22, 1977, the International Association of Machinists was dismissed from the case; however, its local Lodge 912 was subsequently added as a substitute defendant. References to the IAM in this brief, therefore, refer to local Lodge 912. The International Association of Machinists, not having been a party in the Court of Appeals, is not properly a Respondent in this Court.

The courts below found on the basis of undisputed evidence that separate bargaining units were established by the National Labor Relations Board in 1949. In the resulting NLRB elections at the Evendale plant, Respondents IAM and its Lodge 912 and Respondents UAW and its Local Union 647 became exclusive collective bargaining representatives of respectively, a skilled craft unit and a production and service unit. *General Electric Co.*, 86 N.L.R.B. 327 (1949). (Pet. App. 3, 24-25) At all times these units were established and maintained pursuant to the above-cited decision of the National Labor Relations Board and the mandates of the National Labor Relations Act that Board certifications be maintained.

The District Court found that from the commencement of the earliest limitations period on June 4, 1969, black employees comprised approximately 20% of the UAW-represented production and service workforce. (Pet. App. 13, 22, 40) An analysis of significant upgrades during the relevant time frame revealed that black employees received 24.87% of such upgrades. (Pet. App. 13, 40) The District Court also analyzed the upgrades to specific job grades and classifications within job grades as well as the selection procedures used and found no evidence of disparate impact or racial discrimination. (Pet. App. 13, 17-18, 37, 41-42) With respect to transfers between the UAW and IAM units, the evidence similarly showed a direct proportion between the number of black applicants considered under the procedure and the number of black applicants accepted. (Pet. App. 14, 42)

Evidence of alleged pre-limitation acts of discrimination and alleged GE policies was admitted or rejected by the District Court based on the relevance of the evidence to the issues being tried. The Court, for example, permitted witness' testimony about an employee's efforts to be upgraded to an IAM carpenters position in 1956 or 1957, as well as permitting other pre-time frame testimony which was

arguably relevant to the manner in which the IAM seniority system was being applied at that time. The District Court declined to hear evidence regarding certain alleged upgrade procedures concededly no longer in effect before the limitations period as well as prelimitations acts of alleged discrimination, as the alleged procedures and acts had no probative value to the issues before it.

The District Court granted broad discovery to the Petitioners and had before it the entire record of promotions made during the time frame in the contested positions. (Pet. App. 7-8, 40-42) The District Court permitted amendment to exhibit and witness lists prior to the opening of the defendants' case as it had permitted such amendments before opening and during the course of plaintiffs' case. After defendants rested, it also permitted the plaintiffs wide scope in rebuttal and months to prepare for and present rebuttal.

The District Court refused to permit the Petitioners to introduce during their rebuttal a discredited exhibit that had been originally proffered by the UAW, because that exhibit had been withdrawn as inaccurate, after Petitioners' questioning. The District Court also declined to enforce requested subpoenas or compel discovery at various points in the trial of matters which, in the context, were unnecessary to plaintiffs' case and which, as in the case of the General Electric's Affirmative Action Plans, presented public policy questions relating to the necessity of disclosure as well as questions of appropriate trial procedure.

The Court did not, as Petitioners assert, apply an improper standard to the Petitioners' retaliation claims but instead found that Petitioners, as plaintiffs, failed to meet their burden of proof where their individual complaints were either time barred or largely unsupported by any evidence other than that individual's own testimony and the defendant had presented "convincing contradictory testimony." (Pet. App. 43-44) Similarly, the Appellate Court did not, as Petitioners claim, "attempt to resolve factual

issues on its own when under Rule 52 . . . the District Judge makes no findings of fact . . . ." (Pet. iii) Instead, the District judge made ample and amply supported findings of fact which the Court of Appeals found to be not "clearly erroneous." (Pet. App. 19)

ARGUMENT

Contrary to Petitioners' assertion, the Court of Appeals and District Court applied well recognized legal principles in the disposition of this case.[3] Insofar as the Petitioners' points relate to GE, the exclusion of certain pre-limitations claims of alleged discrimination is entirely consistent with this Court's decisions in *Teamsters v. United States*, 431 U.S. 324 (1977) and *United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977). Far from Petitioners' reading, this Court held in *Teamsters* that prelimitations transfer rules are not evidence of post-limitations discrimination—although the class members were "locked into" inferior jobs by such rules. Obviously, pre-limitations acts of individual discrimination have even less probative value. *United Air Lines, Inc. v. Evans, supra.* The argument becomes academic in a situation such as this where there is not the least basis for reversing the District Court and Court of Appeals in their unanimous determination that there was no discrimination in the post-limitations time frame.

The issue concerning the bona fides of GE's seniority system is presented here as a problem concerning the appropriate allocation of the burden of proof. Burden of proof is irrelevant, however, as even Petitioners themselves agree, in the absence of a showing of adverse impact flowing from the application of seniority rules. Both courts below reviewed the evidence pertaining to inter-unit promotional

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[3] Petitioners' faciual assertions also, to the extent they do not simply recite the Court's findings are, virtually without exception, unsupported by the record. We note further the inadequacy of the Petition generally under Rule 21.5.

requests and concluded that no such impact had been established.[4]

Similarly, the evidentiary and discovery points raised in the Petition were summarily dismissed upon extensive review by the Court of Appeals which is charged by this Court with the supervision of the district courts in these areas. As the Court of Appeals pointed out, "evidentiary rulings by a trial court as to the exclusion or admission of evidence constitute reversible error only if a substantial right of the party is affected. Fed. R. Evidence, 103(a)." (Pet. App. 8-9) Further, as to discovery, the Court of Appeals noted that "a trial judge has wide latitude in discovery matters, and should only be reversed for clear abuse of discretion." (Pet. App. 7)

Where the evidence so clearly establishes the impropriety of the Petitioners' substantive claims, the Court below could hardly do otherwise than affirm the District Court's evidentiary and discovery rulings. "He who seeks to have a judgment set aside because of an erroneous ruling carries the burden of showing that prejudice resulted." *Palmer v. Hoffman*, 318 U.S. 109, 116 (1943). The finding by the Court of Appeals that plaintiffs had "full access to the data relevant to this action" provides a full answer to the various discovery contentions made by the Petitioners. (Pet. App. 6, 18) *See Carter Electric Co. v. Travelers Indemnity Co.*, 382 F.2d 567, 571-572 (10th Cir. 1967). Similarly, the claims regarding abuses of discretion in permitting addition of new exhibits and witnesses, the exclusion of the tainted UAW exhibit and the treatment of the individual claims were all concretely answered by the Court of Appeals. The District Court's analysis of the individual claims is precisely the analysis this court mandated in *Texas Dept. of*

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[4] Further, Petitioners failed totally to present evidence showing that any party's intention in maintaining the two separate units was other than complying with the nation's labor laws. *See Pullman Standard Div. v. Swint*, Nos. 80-1190 and 1193, 50 U.S.L.W. 4425 (April 27, 1982).

Community Affairs v. Burdine, 450 U.S. 248 (1981). The Court's dispositions of the trial procedure matters were also completely consistent with well established principles of law. *See Davis v. Duplantis*, 448 F.2d 918, 921 (5th Cir. 1971).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

/s/ William K. Engeman

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CERTIFICATE OF SERVICE

I hereby certify that I have served three copies of the foregoing Brief for General Electric Company in Opposition upon Richard Halberstein, Esq., 625 North Carolina Avenue, S.E., Washington, DC 20003; Bernard C. Fox, Esq., 601 Gwynne Building, 602 Main Street, Cincinnati, OH 45202; Walter L. Sales, Esq., Third Floor, M.E. Taylor Building, Louisville, KY 40202; and Paul H. Tobias, Esq., Tobias & Kraus, 911 First National Bank Building, Cincinnati, OH 45202, by certified mail, return receipt requested, this 16th day of December, 1982.

/s/ William K. Engeman

ARGENTINA

General Electric Argentina Sociedad Anonima
SADE Sociedad Anonima Constructora, Commercial, Industrial, Financiera, Inmobiliaria de Mandatos

AUSTRALIA

Australian General Electric Limited
Australian General Electric Properties Limited
Australian General Electric (Sales) Limited
Australian Metallurgical Coal Pty. Ltd.
Bunbury Rewinds Pty. Ltd.
Central Queensland Coal Associates
C. Dorman Pty. Ltd.
Endeavour Minerals N.L.
General Electric—Goninan Engineering Services Limited
General Electric Information Services, Pty. Limited
General Electric (Plastics) Australia Pty., Ltd.
General Electric—Rickard Limited
General Electric—Mobile Radio Pty. Limited
Goldfields Rewinds Pty. Ltd.
Goldsworthy International Limited
Goldsworthy (Japan) Limited
Goldsworthy Mining Limited
Hay Point Services Pty. Ltd.
Jones and Rickard (Pty.) Limited
Kanava Manufacturing Pty. Limited
Kanava Pty. Ltd.
McCamey Iron Ore Associates
McCamey Mining Limited
Mount Goldsworthy Mining Associates
Rank Appliances Distribution Pty. Ltd.
Rank—General Electric Housewares Pty. Ltd.
Rank—General Electric Major Appliances Pty. Ltd.

AUSTRALIA (cont'd)

South Alligator Joint Venture
F. R. Tulk & Co. Pty. Limited
Utah Beta Pty. Limited
Utah Metals and Minerals Pty. Ltd.

AUSTRIA

General Electric Technical Services GmbH
"General Electric" Informations-Service Ges. m.b.H.
Carboloy GmbH

BAHRAIN

Middle East Engineering Limited

BELGIUM

S.A. General Electric Information Services N.V.

BERMUDA

Bridgport Company Limited
Dahlia Company Limited

BRAZIL

Banco Brasileiro de Investimentos Ipiranga S.A.
Consorcio SADE-MERVAL S.C.
Consorcio TECHINT-SADE-Contecsa S.C.
Fundicao Tecnica Nacional S.A.
General Electric do Brasil S.A.
General Electric do Nordeste, S.A.—Produtos Electricos
Inducon do Brasil, Capacitores S.A.
Itamon-Construcoes Industrias Ltda.
Mineracao Marex Ltda.
Precon-SADE-Presade S.C.
Sade-Sul Americana de Engenharia S.A.
Samarco Mineracao S.A.
Sociedade Intercontinental de Compressores Hermeticos
Storno do Brasil-Industria e Comercio de Radio Communicacoes, Ltda.

BRAZIL (cont'd)

Tivoli Comercio e Participacao Ltda.
UMON-Engenharia de Montagem Ltda.
Utah International Participacoes Ltda.
VIGESA-Villares Geracao Electrica S.A.

CANADA

Allenwest (Canada) Limited
Amalgamated Electric Corporation, Ltd.
Argonaut Construction Co. Ltd.
Benjamin Electric Manufacturing Company of Canada Limited
Buell Envirotech, Ltd.
Camco Inc.
Canadian General Electric Company Limited
Canadian General Electric International Limited
Canadian Nuclear Equipment Suppliers Limited
Dominion Engineering Company Limited
Dominion Engineering Works Limited
Genelcan Limited
Genelcan Realty Limited
Genelcom Limited
General Electric Medical Systems Limited
Gescan Limited
Montreal Armature Company Limited
Radio Valve Company Limited
Riverdale Park, Ltd.
Rupert Inlet Copper Mines Ltd.
Smith and Stone Inc.
W. L. Stevens Ltd.
Widney Well Servicing (1971) Limited

CHILE

Electromat, S.A. Fabrica de Materiales Electricos
Propriedades Mineras Limitada

CHINA

The China Car and Foundry Company Limited

COLOMBIA

Compressores Andinos, S.A.
Condisa Limitada Ingenieros Contratistas S.A.
Consorcio Distral-SADE Ltda.
General Electric de Colombia, S.A.
Sud Americana de Electrificacion S.A.

CUBA

Bombillos General Electric de Cuba, S.A.
Genelectric Rayos-X, S.A.
General Electric Cubana, S.A.
Manufacturera General Electric, S.A.

DENMARK

General Electric Nuclear Medical ApS
Isua Minekompagni I/S
Storno A/S

DOMINICAN REPUBLIC

Sade Dominicana S.A.

ECUADOR

Sadelmi Ecuatoriana S.A.

FRANCE

CFM International, S.A.
Calma et Cie
Eurolan, S.A.
Fabrications Mecaniques de l'Atlantique, S.A.
General Electric Information Services, S.A.
General Electric Plastics S.A.R.L.
Intersil Datel, S.A.R.L.

FRANCE (cont'd)

L'Eclairage Technique, S.A.
Maneurop, S.A.
SNEF Electro Mecanique (S.A.R.L.)
Storno S.A.
Technibel, S.A.
W.Q.S. France S.A.R.L.

GERMANY

Calma GmbH
ELEKLUFT Elektronik-und Luftfahrtgerate GmbH
ELEKLUFT Versorgungseinrichtung GmbH
General Electric Informations Service GmbH
General Electric Plastics GmbH
Intersil Datel GmbH
Quarzglas GmbH
Storno Electronic GmbH
Unterstutzungskasse der Deutschen General Electric Gesellschaften GmbH
Westdeutsche Quarzschmelze GmbH

HONG KONG

Electronic Industry Limited
Intersil Datel (HK) Ltd.

INDIA

Elpro International Limited
International General Electric Company (India) Limited
Intersil (India) Limited

INDONESIA

International General Electric Company Inc. of Java
P. T. Tropic Endeavour Indonesia

IRAN

Iran Electrical and Mechanical Service Company
Iranian Compressor Manufacturing Company
Pars Appliance Manufacturing Company

IRELAND

Atlantic Projects Company Ltd.
ECCO, Limited
The E. I. Company Limited

ITALY

Calma Italia S.R.L.
Carboloy S.p.A.
CGE-Compagnia Generale di Elettricita S.p.A.
CGE-Compagnia Gererale Elettromeccanica S.p.A.
Fabbrica Italiana Apparecchiature RadioElettriche S.p.A.
General Electric Information Services S.p.A.
General Electric Plastics Italia S.p.A.
INELCO-Elettronica Professionale, S.p.A.
SADELMI-COGEPI Compagnia Generale Progettazioni e Installazioni S.p.A.
Societa Nazionale delle Officine di Savigliano S.p.A.
Turbomotori Internazionale S.p.A.

JAPAN

Asahi Diamond Industrial Company, Limited
Datel Kabushiki Kaisha
Drive Systems Company, Ltd.
Engineering Plastics, Ltd.
Eye Lighting Systems Corporation
General Aircon, Ltd.
General Aircon Distribution, Ltd.
General Electric Japan, Ltd.
Information Services International-Dentsu, Ltd.
Japan Nuclear Fuel Company, Limited

JAPAN (cont'd)

Nippon ESGE K.K.
Specialty Materials Technical Center (Japan), Inc.
Tokyo Kucho, Ltd.
Toshiba Corporation
Toshiba Electronic Systems Co. Ltd.
Toshiba General Electric Finance Corporation
Toshiba Silicone Company, Ltd.

KENYA

General Electric (Kenya) Ltd.

LIBERIA

Bulkers Limited
Marcona Carriers, Ltd.
Marcona Conveyor Corporation
Orco Green Corporation
Orco Orange Corporation
Orco Shipping Corporation
Utah Shippers Inc.
Utah Transport Inc.

MALAYSIA

General Electric (USA) Audio Malaysia Sdn. Bhd.
General Electric (USA) Television Sdn. Bhd.

MEXICO

Aparatos Electricos de Acuna, S.A. de C.V.
CCC de Mexico, S.A. de C.V.
Compania Armadora, S.A. de C.V.
Compania Utah, S.A. de C.V.
Datacom de Mexico, S.A. de C.V.
ECOM de Mexico, S.A. de C.V.
Electroaparatos de Mexico, S.A. de C.V.
Electro Componentes de Mexico, S.A. de C.V.

MEXICO (cont'd)

Generacion Electrica Nacional S.A. de C.V.
General Electric de Mexico, S.A. de C.V.
Industrial Controls de Mexico S.A. de C.V.
Productos de Control, S.A. de C.V.
Radio Componentes de Mexico, S.A. de C.V.
Sistemas de Baterias, S.A. de C.V.
Sociedad de Motores Domesticos S.A. de C.V.
URA-TEC S.A. de C.V.

NETHERLANDS

General Electric Information Services B.V.
General Electric Plastics B.V.
I. B. Noordland B.V.
B.V. Electrotechnische Fabriek J.B. Van Wijnsberge en Zoon
Specialty Materials International B.V.

NEW ZEALAND

New Zealand General Electric Company Limited
Rank Appliances New Zealand Pty. Limited
Waipipi Iron Sands Limited

NIGERIA

American GE of Nigeria
General Electric USA (Nigeria) Limited
Sadelmi Nigeria Limited

NORWAY

General Electric (USA) Information Services A/S
Medirad Medical AS

PANAMA

Marcona International, S.A.
Private Investment Company for Asia S.A.
Utah Carriers, S.A.

PHILIPPINES

Agricultural Needs, Inc.
General Electric Philippines, Inc.
General Electric Philippines Meter and Instrument Co., Inc.
Philippine Appliance Corporation
Philippine Electric Corporation
Philippine Electrical Manufacturing Company
Philippine Glass Bulbs, Inc.
Philacor Realty and Development Corporation
Pinagkaisa Realty Corporation

PORTUGAL

General Electric Portuguesa, S.A.R.L.

PUERTO RICO

General Electric Anasco, Inc.
General Electric Circuit Breakers, Inc.
General Electric Controls, Inc.
General Electric Credit and Leasing Corporation of Puerto Rico
General Electric Credit Corporation of Puerto Rico
General Electric del Caribe, Inc.
General Electric GEPOL, Inc.
General Electric Indicating Devices, Inc.
General Electric Industrial Products, Inc.
General Electric Low Voltage Products, Inc.
General Electric Pilot Devices, Inc.
General Electric Power Products, Inc.
General Electric Protective Devices, Inc.
General Electric Reconstruccion Industrial Corporation
Industrial Control of Puerto Rico
International General Electric Puerto Rico, Inc.
Power Breakers, Inc.
Precision Protective Devices, Inc.
Protective Relays, Inc.

PUERTO RICO (cont'd)

Ventas de General Electric Controles, Inc.
Wiring Devices of Puerto Rico, Inc.

SAUDI ARABIA

Jamjoom Electrical Distribution Assemblies Company, Ltd.
Middle East Engineering Limited Saudi Arabia
SADELMI Shaker Tamimi Construction Company
The Saudi America General Electric Company Limited

SINGAPORE

Electronic Components of General Electric (USA) Private Limited
General Electric (U.S.A.) Appliance Components Private Limited
General Electric (U.S.A.) Aviation Service Operation Pte. Ltd.
General Electric (U.S.A.) Consumer Electronics Private Limited
General Electric (U.S.A.) Controls Private Limited
General Electric (U.S.A.) Hermetic Motor Operation Private Limited
General Electric (U.S.A.) Housewares Private Limited
General Electric (U.S.A.) Television and Appliance Private, Limited
Intersil Singapore (Pte.) Limited
Watt & Akkermans Pte. Ltd.

SOUTH AFRICA

Ajax Manufacturing Company (Pty.) Limited
Allenwest (Cape) (Pty.) Limited
Allenwest-GE Manufacturing (Pty.) Limited
Allenwest-GE Sales (Pty.) Limited
B-H Electronics (Proprietary) Limited

SOUTH AFRICA (cont'd)

Charomel Investments (Pty.) Ltd.
Defy Agencies (Pty.) Limited
Defy Air Conditioners (Pty.) Ltd.
Defy Industries (Pty.) Limited
Defy Investments (New Castle) (Pty.) Ltd.
Defy Investments Pretoria (Pty.) Ltd.
Defy Sales EP (Pty.) Ltd.
Defy Sales Western Cape (Pty.) Ltd.
ECC Enterprises (Pty.) Ltd.
EICSA (Proprietary) Limited
Gaycas (Pty.) Ltd.
General Electric South Africa (Proprietary) Limited
Hartmor Fluorite (Proprietary) Limited
Inkongweni (Pty.) Ltd.
Lease Air (Pty.) Ltd.
Magnet Wires (Proprietary) Limited
Manchester Property Investments (Pty.) Ltd.
Mitben Property Investments (Pty.) Ltd.
Newcastle Flats (Pty.) Ltd.
Petta Properties (Proprietary) Limited
Polly's Kloof Mining Company (Proprietary) Limited
Reid & Mitchell (Pty.) Limited
R & M Electrical Sales (Pty.) Limited
Simplex Electric of South Africa (Pty.) Limited
Simplex-GE Lighting (Pty.) Limited
South African General Electric Company (Pty.) Ltd.
Southern Sphere Coal (Proprietary) Limited
Southern Sphere Mining and Development Company (Proprietary) Limited
Southern Sphere Uranium (Proprietary) Limited
Wireohms South Africa (Pty.) Ltd.

SPAIN

General Electric (U.S.A.) Information Services, S.A.
General Electric Electromedicina, S.A.

SPAIN (cont'd)

International General Electric Company of Spain, S.A.
Sociedad Anonima de Ingenieros Contratistas

SWAZILAND

General Electric Limited

SWEDEN

General Electric (USA) Information Services AB
International General Electric Aktiebolag AB
Svenska Medirad A.B.
Svenska Storno AB

SWITZERLAND

General Electric Information Services AG

TAIWAN

Taian Electric Manufacturing Company
United Asia Electric Company

TURKEY

General Elektrik Turk Anonim Sirketi

UNITED ARAB EMIRATES

Middle East Engineering Limited—U.A.E.

UNITED KINGDOM

Allenwest Electrical Insulators Limited
Allenwest Limited
Allenwest EAC Limited
Cange Limited
Carboloy Ltd.
Cema (U.K.) Limited
Clang Limited
Claytat Limited

UNITED KINGDOM (cont'd)

DMR Electro Magnets Limited
Dynamo & Motor Repairs Limited
Dynamo & Motor Repairs (South Wales) Limited
Dynamo & Motor Repairs (Stockton) Limited
Dynamo & Motor Repairs (Tyne and Wear) Limited
Dynamo & Motor Repairs (Wembley) Limited
Engineering Polymers Ltd.
GEISCO Limited
Group Four Electronics Limited
Hackbridge-Faraday Electronics Limited
International General Electric Company of New York Limited
Intersil Datel (U.K.) Limited
N.C. Joseph Limited
J.W. Morgan & Son, Limited
Optech Power Systems, Ltd.
Potters Electrical Repair Company Limited
Process Control Gear Limited
Sadelmi Limited
Simplex Conduits Limited
Simplex Electric Company Limited
Simplex Export Limited
Simplex (FAL) Limited
Simplex (Fans & Ballasts) Limited
Simplex-GE General Pension Trustees Limited
Simplex-GE Holdings Limited
Simplex-GE Manufacturing Limited
Simplex-GE Limited
Simplex-GE Staff Pension Trustees Limited
Simplex (Lighting) Limited
Simplex (Power Centre) Limited
Simplex (Wiring Devices) Limited
Simplex Wiring Systems Limited
Smithlite Limited

UNITED KINGDOM (cont'd)

Storno Limited
The Benjamin Electric Limited
The Electrical Apparatus Company Limited
The Reason Manufacturing Company
The Wallacetown Engineering Company Limited
Tyne & Wear Electrical Company Limited
Utah Minerals (U.K.) Limited
Wallacetown Control Systems Limited
Wallacetown Properties Limited

UNITED STATES

Acquisition Funding Corporation
Adobe Canyon Corporation
Aircraft Services Corporation
Aircraft Services Limited Partnership
Alton Minerals Inc.
Alton Mining Corporation
Amfac Insurance Services, Inc.
A.P.-GERECCO Ltd.
Applied Materials, Inc.
Arlington Telecommunications Corporation
Arvada Fremont Developers
Atlantic Plant Maintenance, Inc.
Banking Systems, Inc.
Bay Farm Island Inc.
Benerson Corporation
Biological Energy Corporation
CBI Nuclear Company
CFM International, Inc.
Calma Company
Calma Company of Virginia
Calmadisc, Inc.
Castle Oaks Corporation
Chemico Air Pollution Control Corporation
Chemico Basic Corporation

UNITED STATES (cont'd)
Chemico Engineering Co., Ltd.
Claremont Management Co.
Clinton Employment Center Associates
Commonwealth, Inc.
Commonwealth Properties, Inc.
Comwe, Inc.
Consumer Communications Corporation
Creative Credit Services, Inc.
Cyprus Pima Associates
Diamond Oaks Associates
Diamond Oaks Corporation
East Erie Commercial Railroad
Ebbert's Homes VI
Ebbert's Homes VII
ECOGE/U.S., Inc.
Electric Transport Inc.
Enercom, Inc.
Evansville Cable TV, Inc.
Feather River Coal Company
Fremont Coal Company
Fremont Development Inc.
Full Service Leasing Corporation
Garrison-Petaluma Associates
GE Interactive Graphics, Inc.
GECC Escrow Services, Inc.
GECC Financial Corporation
GECC Hawaii Leasing Corporation
General Electric Asia Capital Corporation
General Electric Broadcasting Company, Inc.
General Electric Broadcasting Company of Colorado, Inc.
General Electric Cablevision Corporation
General Electric Credit and Leasing Corporation
General Electric Credit Auto Lease Inc.
General Electric Credit Corporation
General Electric Credit Corporation of Delaware

UNITED STATES (cont'd)

General Electric Credit Corporation of Georgia
General Electric Credit Corporation of Tennessee
General Electric Credit International, N.V.
General Electric Environmental Services, Inc.
General Electric Information Services Company
General Electric International Operations Company, Inc.
General Electric International Sales Company
General Electric Investment Corporation
General Electric Mortgage Corporation
General Electric Mortgage Corporation of Delaware
General Electric Mortgage Insurance Corporation
General Electric Mortgage Insurance Corporation of Florida
General Electric Overseas Capital Corporation
General Electric Radio Services Corporation
General Electric Real Estate Credit Corporation
General Electric Real Estate Equities, Inc.
General Electric Realty Corporation
General Electric Technical Services Company, Inc.
General Electric Uranium Management Corporation
General Electric Venture Capital Corporation
General Electric Video, Inc.
Genetic Sciences Corporation
Great Western Silicon Corporation
Harbor Bay Isle Associates
L. E. Hawkins Contractors, Inc.
High Voltage Breakers, Inc.
Holiday Pines
Holiday Pines Service Corp.
Homemakers Finance Service, Inc.
Homemakers Loan & Consumer Discount Company
Hydraulic Turbines, Inc.
Instructional Industries Inc.
Intersil, Inc.

UNITED STATES (cont'd)

Intersil International, Inc.
Isla del Sol, Inc.
Kun-Yong of Korea, Ltd.
LVO Data Systems, Inc.
LVO 1971 Exploration Program
LVO 1972 Exploration Program
LVO 1972 Exploration Program II
Ladd Bataan, Inc.
Ladd Exploration Company
Ladd Ilolos, Inc.
Ladd Italiana S.p.A.
Ladd Mindoro, Inc.
Ladd Overseas Corporation
Ladd Petroleum Corporation
Lake Adair Corporation
Lambda Technology, Incorporated
Little Medicine Development Company
Locke Insulators, Inc.
Lucky Mc Exploration Corp.
Lucky Mc Uranium Corporation
Management and Technical Services Company
Marcona Greenland Company
Marcona, Inc. (Delaware)
Marcona (N.Z.) Company
Marcona New Zealand, Inc.
Marcona Ocean Industries, Ltd.
Mariposa Mining Company
Matewan Minerals Inc.
Metropolitan REIM
Middle East Technical Services Company
Midwest Electric Products, Inc.
Minera Utah de Chile Inc.
Minera Utah de Colombia Ltd.
Monogram General Agency of Florida, Inc.

UNITED STATES (cont'd)

Monogram General Agency of Kentucky, Inc.
Monogram General Agency of Mississippi, Inc.
Monogram General Agency of North Carolina, Inc.
Monogram General Agency of South Carolina, Inc.
Monogram General Agency of Texas, Inc.
Monogram General Insurance Agency, Inc.
Multi-Craft Installation Services, Inc.
Park Place Developers, Ltd.
Parker County Pipeline Company
Pathfinder Mines Corp.
Pathfinder Mines Corporation
Pembroke Coal Company
Petaluma Center, Inc.
Powers Ferry Vantage Associates
Puritan Excess and Surplus Lines Insurance Company
Puritan Insurance Company
Puritan Life Insurance Company
Puritan Title Insurance Company
Ridgeview Management Company
Redwood Coal Company
Rolling Hills Corp.
Rolling Hills Ranch
Sadelmi New York, Inc.
San Juan Coal Company
Shirley Basin Service Company
Sierra Coal Company
Software International Corporation
Southern Sphere Holdings Limited
Springer Mining Company, Inc.
Stamford Square Associates
Stations Associates
Tau Epsilon Music, Inc.
Telesoftware, Inc.
Terradex Corporation
Terzack, Inc.

UNITED STATES (cont'd)

Tomorrow Syndication, Inc.
Trafalgar Community Developers, Inc.
Trafalgar Credit Corporation
Trafalgar Developers of Florida, Inc.
Trafalgar Developers, Inc.
Trafalgar Realty, Inc.
Uintah Corporation
Utah Australia Limited
Utah Construction & Mining Co.
Utah Development Company
Utah Exploracoes Mineiras (Portugal) Inc.
Utah Exploration Inc.
Utah Far East Inc.
Utah International Inc.
Utah International Finance Corp.
Utah—Marcona Corporation
Utah Mines Ltd.
Utah Pacific Inc.
Utah Saudi Arabia Inc.
Utah South Africa Inc.
VHD Disc Mfg. Co.
VHD Electronics, Inc.
VHD Programs, Inc.
Vandenberg Village Development Company
Victor X-Ray Corporation
Victoria Coal Company
Yacht & Racquet Club of Boca Raton

URUGUAY

General Electric de Uruguay S.A.

VENEZUELA

General Electric de Venezuela, S.A.
Indelec S.A. Industrias Electronicas
Manufacturera de Aparatos Domesticos S.A.

VENEZUELA (cont'd)

Maquinarias Venequip S.A.
Sociedad Financiera Credival C.A.
Sud Americana de Electrificacion, S.A.
Terrenos y Maquinarias Termaq S.A.
Turbinas y Mecanica C.A.
Venezolana de Compresores y Motores S.A.
Vidriolux, C.A.

ZAMBIA

Allenwest (Zambia) Limited

ZIMBABWE

General Electric (USA) of Zimbabwe (Private) Ltd.
Simplex-GE (Private) Limited